Supreme Court, U.S.
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No. 99-

IN THE

Supreme Court of the United States

VESSEL MY GIRLS and JOHN N. SINGLETON,

Petitioners,

v.

MARINA MANAGEMENT SERVICES, INC., d/b/a/
JAMES CREEK MARINA as Agent for
MIF REALTY, LP,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

PETITION FOR WRIT OF CERTIORARI

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145pp

QUESTIONS PRESENTED FOR REVIEW

1. Can an agent, who does not possess the substantive right to a debt owed, prosecute an action as a real party in interest under Rule 17(a) of the Federal Rules of Civil Procedure in his own name or as agent for his principal, even if the agent is authorized by the principal?

2. May the Court of Appeals on review of an appeal from the District Court make findings of fact on issues not resolved by the District Court, or must the Court of Appeals remand the case to the District Court for determination of the factual issues?

3. May the District Court dismiss counterclaims pursuant to Rule 11 as frivolous and interposed for an improper purpose without making specific findings setting forth the basis of its ruling that the counterclaims were frivolous and interposed for an improper purpose?

4. Did the Court of Appeals properly apply the abuse of discretion standard of review as established by the Court in *Cooter & Gell* by applying a wholly deferential standard of review to the District Court's conclusory findings that defendant's counterclaims were frivolous and interposed for an improper purpose and should be dismissed under Rule 11, where there were no specific findings to review, as required by Rule 11, setting forth why the counterclaims were deemed frivolous and interposed for an improper purpose?

5. Did the Court of Appeals err in not applying a deferential standard of review to the District Court's specific finding that plaintiff made material misrepresentations to the District Court and misled the District Court, and should be sanctioned under Rule 11?

PARTIES TO THE PROCEEDING

The following persons and entities were parties before the United States Court of Appeals for the District of Columbia Circuit:

1. Vessel My Girls, *In Rem* and John N. Singleton, *In Personam*, defendants, appellees and cross appellants; and

2. Marina Management Services, Inc., d/b/a James Creek Marina as Agent for MIF Realty, LP, and Lisa Petti Ellis as Attorney, plaintiff (except Ms. Ellis), appellants and cross appellees.

CORPORATE DISCLOSURE STATEMENT

The claimed owner of the substantive right is MIF Realty, LP which is not a party to the action. MIF Realty LP is, on information and belief, a subsidiary, affiliate or related company of MIF Gen-Par L.P., MIF Sponsor, Inc. and the Archon Group of Irving, Texas.

I, as counsel of record for Vessel My Girls and John N. Singleton, certify, to the best of my knowledge and belief, that there are no parent companies, subsidiaries or affiliates of Marina Management Services, Inc., the respondent, and that there is no publicly held company owning 10% or more of the stock of Marina Management Services, Inc.

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II. As it is the province of the District Court, not the Court of Appeals, to make findings of fact, the Court of Appeals erred in making a finding of fact that the Boat Storage Agreement was extended beyond June 6, 1996. Fact finding by the Court of Appeals is contrary to the decisions of the Court and the practice in other circuits. .. 15

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III. The decision of the Court of Appeals to uphold the dismissal of Singleton's counterclaims as frivolous on an abuse of discretion standard of review without findings by the District Court as to why the counterclaims were frivolous is contrary to Rule 11 and conflicts with the holding of the Court in *Cooter & Gell* and decisions of other Courts of Appeal such as the Second Circuit. 19

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PETITION FOR WRIT OF CERTIORARI

OFFICIAL AND UNOFFICIAL REPORTS OF OPINIONS AND ORDERS IN THE CASE

The Opinion and Judgment of the Court of Appeals for the District of Columbia Circuit in this case appears in the Appendix to the petition at App. 1a and 21a. This decision has been officially reported at 202 F.3d 315 (D.C. Cir. 2000).

The May 29, 1997 opinion of the District Court relating to James Creek Marina as the real party in interest has been reported at 964 F. Supp. 20 (D.D.C. 1997) and appears in the Appendix to the petition. App. 25a. The other relevant Orders and Opinions in this case also appear in the Appendix to this petition, but have not been officially or unofficially reported.

STATEMENT OF JURISDICTION

The judgment of the Court of Appeals for the District of Columbia Circuit was entered on February 11, 2000, App. 21a. with an opinion. Opinion, App. 12a. A timely petition for rehearing was filed on March 13, 2000 and was denied on March 29, 2000. App. 58a. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) (1994).

Jurisdiction of the United States District Court for the District of Columbia existed under 46 U.S.C. § 31342 (1994) and 28 U.S.C. §§ 1331, 1333 (1994). Jurisdiction of the United States Court of Appeals for District of Columbia Circuit over the appeal and cross appeal of a final order and judgment and all prior non-final orders in the case was grounded upon 28 U.S.C. § 1291 and §1292(a)(3) (1994).

STATUTES AND RULES

RULE 11.

Signing of Pleadings, Motions, and Other Papers; Representations to Court; Sanctions

(a) **Signature.** Every pleading, written motion, and other paper shall be signed by at least one attorney of record in the attorney's individual name, ...

(b) **Representations to the Court.** By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, –

> (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
>
> (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
>
> (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and
>
> (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(c) **Sanctions.** If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions

stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

(1) **How Initiated. . . .**

(A) . . .

(B) **On Court's Initiative.** On its own initiative, the court may enter an order describing the specific conduct that appears to violate subdivision (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b) with respect thereto . . .

(2) . . .

(3) **Order.** When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed.

RULE 17.

Parties Plaintiff and Defendant; Capacity

(a) **Real Party in Interest.** Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in that person's own name without joining the party for whose benefit the action is brought; . . . No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

STATEMENT OF THE CASE

This action was brought in the United States District Court for the District of Columbia by Marina Management Services, Inc. (Marina Management) as "Agent" for MIF Realty LP (MIF Realty) to collect unpaid boat storage fees in excess of $30,000 from defendant/ petitioner John N. Singleton. Amended Verified Complaint, App.79a-87a.

In its original Verified Complaint, Marina Management in the name of James Creek Marina alleged that over $26,000 was owed. Verified Complaint, App. 60a-65a. This allegation was supported by a statement history of amounts due, the verification of a Marina Management official and a Boat Storage Agreement for a term between April 1, 1994 and March 31, 1995 (which had been agreed to by Singleton in an Application Form) Verified Complaint, App. 66a-78a. Based upon the Verified Complaint, Singleton's boat was arrested on March 5, 1997 by Order of the District Court (The Honorable Paul L. Friedman). Order of Arrest, App. 23a-24a. The statement annexed to Verified Complaint claimed amounts due from February 10, 1995 to February 27, 1997. Statement, App. 70a-77a. Marina Management also sought foreclosure. Verified Complaint, App. 64a.

Singleton contended that his boat had been seized on the basis of a claimed amount, composed in part of backdated transient fees of $980 a month, and that the claim was grounded upon an agreement which had expired on June 6, 1996, as alleged by Marina Management in its original and Amended Verified Complaint. Verified Complaint, App. 62a; Amended Verified Complaint, App. 81a.

The original plaintiff in the action was James Creek Marina. James Creek Marina was dismissed as party plaintiff on the ground that James Creek Marina was not the real party in interest. *James Creek Marina v. Vessel My Girls*, 964 F.

Supp. 20 (D.D.C. 1997). Opinion, App. 25a-31a. After James Creek Marina was dismissed, Marina Management Services as Agent for MIF Realty was substituted as party plaintiff. Amended Verified Complaint, App. 79a-87a.

After the boat was seized and Singleton was deprived of its use because he could not afford the general bond imposed by law (over $50,000) or the special bond set by the Court ($20,542.67), evidence was obtained that the supporting invoice, relied upon by the District Court in ordering the vessel arrested, consisted mostly of transient fees that had never been charged to Singleton before and were backdated on the invoice. Some fees covered periods after the contract had expired on June 6, 1996. *See*, Statement, App. 70a-77a.

Singleton's counsel vigorously attacked Marina Management for misleading the Court and depriving Singleton of his boat by claiming fees in amounts that Singleton was unable to afford a bond. As the Marina's managers were mere agents and not the owners of the marina concession contract with the U.S. Government, Singleton's counsel also challenged the Marina's right to prosecute the claim for the debt and to have the boat arrested.

In due course, the District Court issued a Memorandum Opinion and Order, stating that the District Court:

> was misled by the document attached to plaintiff's Verified Complaint into believing that transient fees actually were levied and billed to defendants on the dates listed in plaintiff's exhibit. In addition, this was suggested, if not argued, in papers filed with the Court and during oral argument, and therefore was relied upon by the Court in calculating the amount of security in the Court's May 29, 1997 Opinion. . . .

> Plaintiff now admits that transient fees were never charged before the start of this litigation.

Memorandum Opinion and Order, filed July 7, 1997, App. 32a, 34a-35a.

After a hearing, the District Court, on the basis of the evidence before it, held that the amount actually owed by Singleton was $6,729.17 plus interest and costs, and reduced the bond required from $20,542.67 to $7,535.55, an amount Singleton was able to afford. Memorandum Opinion and Order, filed July 7, 1997, App. 35a-36a. Within days, Singleton deposited this amount with the District Court and the boat was released. Order, App. 37a.

The District Court then ordered Marina Management to show cause why it should not be sanctioned for its misrepresentations to the District Court.

Ultimately, in addition to the boat storage fees found owing ($6,729.17), the District Court also awarded Marina Management attorneys' fees pursuant to a contract between Washington D.C. Associates and Singleton which had allegedly expired on June 6, 1996. Washington D.C. Associates was in bankruptcy under Chapter 11 and there was no evidence in the record that MIF Realty obtained any contract right from Washington D.C. Associates, or that Marina Management had any right to sue on the contract. Finding sanctions against Marina Management appropriate under Rule 11, the Court reduced its claim for attorneys' fees from $30,000 to $10,000 as a sanction for its conduct in misleading the Court. Memorandum Opinion of January 5, 1999, App. 48a-53a.

On June 30, 1997, Singleton moved to dismiss the Amended Verified Complaint under Federal Rule 17(a). Singleton contended that MIF Realty, the new concessionaire, was not a party plaintiff and that Marina Management, as Agent for MIF Realty, was not a real party in interest. On July 25,

1997, the Court denied, without opinion, Singleton's motion that Marina Management was not the real party in interest. Order, filed July 25, 1997, App. 39a-40a.

On August 11, 1997, with the District Court's July 7, 1997 ruling on the misleading invoice in hand, Singleton and his counsel filed an Amended Answer and Counterclaims. Amended Answer and Counterclaims, filed August 11, 1997, App. 88a-97a. In his counterclaims, Singleton sought damages claiming that prior to the release of the vessel to him, some property had been removed from the vessel, and other property on the vessel had been damaged. Singleton further claimed that Marina Management interfered with his business opportunities by the unlawful arrest of the vessel which barred him from leasing it, that the vessel was wrongfully seized, and, as a result of Marina Management's misrepresentations, a prohibitively high bond was set, that he was defamed, and that the seizure resulted from abuse of process, each of which resulted in damages to Singleton. Amended Answer and Counterclaims, filed August 11, 1997, App. 92a-97a.

On August 6, 1997, plaintiff had filed a Motion for Summary Judgment. On February 9, 1998, the District Court entered an Order, indicating its intent to enter judgment for plaintiff in the amount of unpaid storage fees (but not transient fees) and for attorneys' fees pursuant to the Boat Storage Agreement. Order, filed February 9, 1998, App. 44a-47a.

On the same day, the District Court also entered an Order criticizing the conduct of counsel of both parties and characterized Singleton's counterclaims as frivolous and designed primarily to harass. Order of February 9, 1998, App. 41a-43a. The District Court's Order further provided that:

> "unless the parties can resolve all outstanding matters in this case by withdrawing all request for sanctions, withdrawing the offending pleadings, presenting a

> joint request that the Court discharge its Order to show cause, and withdrawing defendant's counterclaims by March 13, 1998, the Court will appoint a special master"

to find facts and "prepare a report recommending appropriate sanctions to be levied and whether either counsel should be referred to this Court's Grievance Committee." Order, filed February 9, 1998, App. 41a-43a.

On February 28, 1998, Defendant's counsel responded to the Court's Order by, *inter alia,* refusing to withdraw Singleton's counterclaims and filing an Affidavit that the counterclaims were warranted by law and fact. Affidavit of Thomas J. Whalen, App. 98a-102a.

On January 5, 1999, the Court entered a final Order, granting plaintiff's Motion for Summary Judgment, entering judgment for the plaintiff for $7,663.21 plus post-judgment interest at 5.391%, awarding plaintiff $10,000 in attorneys' fees, and ordering that the judgment for plaintiff attach to the bond posted with the Court to be disbursed promptly to plaintiff. The Court reduced the attorneys' fee award from the $30,000 amount claimed, by imposing a sanction on plaintiff of $20,000. Order and Judgment, filed January 6, 1999, App. 54a-55a.

Simultaneously, the Court dismissed defendant's counterclaims as appearing frivolous and designed primarily to harass and delay. Order and Judgment, filed January 6, 1999, App. 48a, 52a-53a. The reason stated by the District Court for dismissing the counterclaims appear in the Opinion, specifically in footnote 4. Memorandum Opinion, January 6, 1999, App. 48a-52a-53a.

Marina Management timely appealed and Singleton timely cross appealed. The Court of Appeals reversed in part and

affirmed in part the judgment of the District Court. Opinion, App. 1a-20a; Judgment, App. 21a-22a.

The Court of Appeals found as follows:

1. Although Marina Management was suing as Agent, and MIF Realty possessed the substantive right to be enforced, Marina Management could continue to prosecute the action as the real party in interest on remand, if Marina Management could establish that it was authorized by MIF Realty to bring the action against Singleton, or that MIF Realty consented to or ratified the action brought by Marina Management.

2. Notwithstanding the allegation in the Verified Complaint that the Boat Storage Agreement between Washington D.C. Associates and Singleton was extended until June 6, 1996, and notwithstanding the fact that no documentary evidence had been introduced by Marina Management that a contract existed from 1995 through February 1997 on basis of which storage fees, transient fees and attorneys' fees were claimed, the Court of Appeals found as fact, based upon a statement of Singleton's counsel to the District Court, that the Boat Storage Agreement was extended from June 6, 1996 for another year.

3. Applying a wholly deferential standard of review, the Court, in substance, found that the statement of account annexed to the Verified Complaint should not have misled the District Court and that the record did not show "that Marina Management or its attorney implied that Singleton had been billed for transient rate charges prior to February 1997." Opinion of the Court, App. 17a. "[I]n the absence of a factual basis for the sanction," the Court remanded the case "so that the District Court may enter an order vacating the sanction." Opinion, App. 18a.

4. At the same time, involving the same deferential standard, without findings of the District Court setting forth why the defendant's counterclaims were frivolous and interposed for an improper purpose (to wit: "in the absence of a factual basis for the sanction"), the Court upheld the conclusory findings of the District Court that the counterclaims were frivolous and designed primarily to harass and delay a final resolution of the case. Opinion, App. 19a-20a.

REASONS FOR GRANTING THE WRIT

I. The holding of the Court of Appeals that an agent who does not possess a substantive interest in a claim, even if authorized by his disclosed principal, can nevertheless, pursuant to Rule 17(a), prosecute an action as a real party in interest conflicts with decisions of other United States Courts of Appeal and the decision of the Court in *United States v. Aetna Casualty & Surety Company*.

In the Court below, the Court of Appeals correctly concluded that Marina Management was not the real party in interest in that Marina Management as Agent did not own or possess the right to be enforced. Opinion, App. 6a.

The Court of Appeals then stated that Marina Management could obtain real party in interest status if it were shown that Marina Management was authorized to prosecute the "instant lawsuit," or that MIF Realty "consented to" Marina Management's lawsuit against Singleton, or "ratified" the lawsuit. Opinion, App. 6a-7a.

The Court of Appeals remanded the case to allow Marina Management "to supplement the record or file a second amended complaint." Opinion, App. 7a.

A principal's "consent," "authorization" or "ratification" has nothing to do with the right of an "agent" to bring the claim in his own name or as "agent" for a disclosed principal. The principal whose interest is at stake must be a party, it is submitted, and be subject to discovery and any defenses of the defendant.

The decision of the Court of Appeals on this point conflicts with decisions in other circuits which have considered the question. *Airlines Reporting Corp. v. S&N Travel, Inc.*, 857 F. Supp. 1043 (E.D.N.Y. 1994), *aff'd*, 58 F.3d 857 (2d Cir. 1995); *Hanna Mining Co. v. Minnesota Power and Light Co.*,

573 F. Supp. 1395 (D. Minn. 1983), *aff'd,* 739 F.2d 1368 (8th Cir. 1984); *Archie v. Shell Oil Co.*, 110 F. Supp. 542 (E.D. La. 1953), *aff'd,* 210 F.2d 653 (5th Cir. 1954); *Lewis v. Canadian Pac. Ry.*, 39 F.2d 834 (7th Cir. 1930).

See also, U.S. Epperson Underwriting Co. v. Jessup, 22 F.R.D. 336, 337-38 (M.D.Ga. 1958); 4 James Wm. Moore et al., Moore's Federal Practice §§ 17.10[3][f], [4] (3d Ed. 1998); 6A Wright Miller & Kane, Federal Practice & Procedure: Civil 2d § 1553 at 11; 403-04 (1990).

The Court has not had occasion to consider the application and meaning of Rule 17(a) since the most recent substantive amendment to Rule 17(a) in 1966 (see Advisory Committee Notes, 1966 Amendment) and its decision in *United States v. Aetna Cas. & Sur. Co.*, 338 U.S. 366 (1949). *See also, Titus v. Wallick*, 306 U.S. 282 (1939).

Nevertheless, the Court in *Aetna* was absolutely clear that the person who qualifies as a plaintiff must possess the substantive claim. This holding has not been changed by the 1966 Amendment to Rule 17(a). As a consequence, for example, collection attorneys who are authorized to sue in the name of their principal have never been allowed to sue in their own name or as agent for their principal. The claim must be brought in the name of the person who owns the claim.

The facts of the case before the District Court and the Court of Appeals were clear. Marina Management sued and had Singleton's boat arrested as agent for MIF Realty. However, it was MIF Realty who had the U.S. Government concession to the Marina and who possessed the substantive claim to any amounts owed.

Contrary to the Rule 17(a) requirement that an action be prosecuted by the real party in interest, the Court of Appeals stated that if MIF Realty, the owner of the substantive right, consents to, authorizes or ratifies Marina Management's

lawsuit, MIF Realty can stay on the sidelines and Marina Management, on remand, can continue to prosecute the action.

This holding is reversible error. It is a decision in conflict with the decisions of U.S. Courts of Appeals of other circuits, cited above, and the plain language of Rule 17(a). Fed. R. Civ. P. 17(a).

The plain language of Rule 17 requires that "[e]very action shall be prosecuted in the name of the real party in interest," which, in this case, is *not* Marina Management. In 1966, Rule 17(a) was amended by the addition of the following clause:

> "No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of the commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest."

Fed. R. Civ. P. 17(a).

The purpose of this amendment was to avoid injustice through the expiration of the statute of limitations and to "codify in broad terms the salutary principle of *Levinson v. Deupree*, 345 U.S. 648 (1953), and *Link Aviation, Inc. v.*

Downs, 325 F.2d 613 (D.C. Cir. 1963)."[1] Rule 17, Advisory Committee Notes (1966 Amendment).

Under the decision of the court below, if MIF Realty ratifies "commencement of the action," the claim still can be "prosecuted" by Marina Management which is not the real party in interest. On the contrary, under Rule 17(a), if MIF Realty ratifies the commencement of the action, the action will relate back for limitations purposes, but, it is submitted, MIF Realty must then "prosecute" the action as the real party in interest. *See Link Aviation*, 325 F.2d 613. Otherwise, there exists the anomalous situation of Marina Management further prosecuting the action when it is not the real party in interest and does not possess the substantive claim.

The "ratification" provision of the Rule applies only to the "commencement of the action" (for limitations purposes), not to its prosecution. Where, as here, the real party in interest has been identified as MIF Realty, there is no basis under Rule 17(a) for permitting the action to continue to be "prosecuted" by one who is not the real party in interest. It is an unwise precedent to allow persons who are not real parties in interest under Rule 17 to prosecute claims and, in this case, to take action to seize a man's property when such person has no legal right to do so. The Rule does not state that the real party may ratify the conduct of the action, only its commencement for statute of limitations purposes.

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[1] In *Levinson*, the Supreme Court (Frankfurter J.) stated that federal practice allowed an administrator, whose proper appointment came after the expiration of the statute of limitations, to file an amended complaint to relate back to inception of the proceeding. 345 U.S. at 651. In *Link Aviation*, the D.C. Circuit held that the insurers were protected from the statute of limitations by the Rule, even though the action was commenced by the insured which was not the real party in interest. The insurers were then permitted to be substituted as parties. 325 F.2d at 613-14.

Under the holding of the Court of Appeals, a principal could presumably authorize an agent or attorney-in-fact to prosecute an action and, if the principal likes the result, he can "ratify" it. If he does not like the result, he can try again.

Like the Court of Appeals in the present case, other circuits may have misapplied the ratification principle contained in Rule 17(a). *See, e.g., Mutuelles Unies v. Kroll & Linstrom*, 957 F.2d 707 (9th Cir. 1992); *Arabian American Oil Co. v. Scarfone*, 713 F. Supp. 1420 (M.D. Fla. 1989), *aff'd*, 939 F.2d 1472 (11th Cir. 1991); *Sun Ref. and Mktg. Co. v. Goldstein Oil Co.*, 801 F.2d 343 (8th Cir. 1986). *See also James v. Nashville Bridge Co.*, 74 F.R.D. 595 (N.D. Miss. 1977).

The Court of Appeals erred in its construction of Rule 17(a), and its ruling is contrary to decisions of other U.S. Courts of Appeal.

II. As it is the province of the District Court, not the Court of Appeals, to make findings of fact, the Court of Appeals erred in making a finding of fact that the Boat Storage Agreement was extended beyond June 6, 1996. Fact finding by the Court of Appeals is contrary to the decisions of the Court and the practice in other circuits.

The Court of Appeals is a court of limited jurisdiction empowered to review District Court findings of fact and conclusions of law under appropriate standards of review. The Court of Appeals is not permitted to find facts, especially when it is contrary to evidence in the case. *Pullman-Standard v. Swint*, 456 U.S. 273 (1982); *DeMarco v. United States*, 415 U.S. 449 (1974). This is the province and role of the District Court. *See* Fed. R. Civ. P. 52(a), Rule 52, Drafting Committee Notes (1985 Amendment).

In *DeMarco*, the Court stated:

> The Government's response to the petition for certiorari agrees that fact finding is the basic responsibility of district courts, rather than appellate courts, and that the Court of Appeals should not have resolved in the first instance this factual dispute which had not been considered by the District Court.

DeMarco, 415 U.S. at 450.

The Court of Appeals is a court of review and correction. It is not the role of the Court of Appeals to make factual determinations on disputed issues. The Court of Appeals' desire to take a shortcut to close the door on important factual issues was error. Courts of Appeal must remand material factual issues to the trial court for resolution.

The only *evidence* of a contract in this case was the one attached to the Verified Complaint and the Amended Complaint. That contract was between Singleton and Washington D.C. Associates with a term from April 1, 1994 "to expire on March 31, 1995." Verified Complaint, App. 62a. There was no "evidence" in the record of a contract extension beyond April, 1995 even though the Marina stated in its Verified Complaint that "[t]he term of the Agreement was extending [sic] by the parties in writing until June 7, 1996." Verified Complaint, App. 62a. That the contract was extended until June 1996 also was restated in the Amended Verified Complaint filed by Marina Management "as Agent for MIF Realty L.P." Amended Verified Complaint, App. 81a.

The Court of Appeals relied upon the following exchange between Judge Friedman and Singleton's counsel for its finding that the contract was extended beyond June 7, 1996. The exchange concerned the bankruptcy of Washington D.C. Associates, the party to Singleton's 1994-1995 contract.

> Judge Friedman: "Now, did I also read in your papers some place that Washington D.C. Associates has now gone bankrupt."
>
> Mr. Whalen: "Yes, your Honor. I talked with the attorney for the trustee. The D.C. Associates went bankrupt. They were still in business through June because Mr. Singleton signed another contract in 1996, which is not part of this - it is not part of the Complaint, but he did sign it with D.C. Associates. But some of the amounts of money that have claimed to be owed is for the period for the contract with D.C. Associates."

Oral Hearing of May 2, 1997, App. 416-417.

Counsel's response to Judge Friedman related to the bankruptcy of Washington D.C. Associates. Counsel stated that Washington D.C. Associates was still in business in 1996 because Singleton signed another contract with Washington D.C. Associates in 1996, presumably, the document that extended the contract until June 1996, as Marina Management had alleged. The Court of Appeals mistakenly relied upon the above exchange to find that Singleton's counsel conceded or stipulated that the contract had been extended beyond June 1996 and thereupon found, as fact, that the contract was extended beyond June 1996. The Verified Complaint and Amended Complaint attest to the contrary. In addition, there was evidence in the record that the Marina's manager had stated on November 20, 1996 that Singleton "has not had a valid license agreement with James Creek since April 1995 and we believe that he is technically trespassing on National Park Service Property." Letter of Robert Taylor, November 20, 1996.

The Court of Appeals was in error when it stated that "Singleton's attorney advised the court that the parties had

extended their agreement in June 1996." Opinion, App. 9a. It was error for the Court of Appeals to hold that "the District Court did not err in finding Singleton's contract extended beyond June 1996." Opinion, App. 2a. The District Court never made such a finding. The District Court simply failed to consider the allegations in the Verified Complaints and, without evidence in the record, simply assumed this fact.

The fact that the Agreement expired in June 1996 is an important issue in the case because, if it expired as Marina Management's Verified Complaints claimed, the contract could not be assigned to anyone in the bankruptcy proceeding of Washington D.C. Associates and consequently neither Marina Management nor MIF Realty could have any contract claims against Singleton.

Counsel's responses to a Federal Judge are not evidence. Juries are told everyday that counsel's statements in court are not evidence. As the burden of proof was on Marina Management, it was incumbent on Marina Management, which claimed that Singleton owed boat storage fees, transit fees, and attorneys' fees, to put the contracts in evidence before the trial judge who is the finder of fact. Although the contract between Washington D.C. Associates and Singleton for the term 1994-1995 was submitted into evidence, no documents were submitted to establish a contract between 1995 and 1996 and from 1996 to 1997. The latter contract, if it existed, would be executory, and in place, at the time MIF Realty took over the marina concession following the bankruptcy of Washington D.C. Associates. It was essential, as a matter of proof, to show that MIF Realty was assigned or became the transferee of the contract pursuant to the Order of the Bankruptcy Judge and possessed the contract claims lodged against Singleton. These factual issues should have been remanded to the trial judge for resolution.

It is the province of the trial court to make factual findings on the evidence, not the Court of Appeals. As the Court has stated, which is equally applicable here: "[t]he District Court's lack of precision, . . ., is no excuse for the Court of Appeals to ignore the dictates of Rule 52(a) and engage in impermissible appellate factfinding." *Amadeo v. Zant*, 486 U.S. 214, 228 (1988).

The decision of the Court of Appeals on this point is contrary to the decisions of the Court and the traditional and well established role of a Court of Appeals as a court of limited jurisdiction to *review* findings of fact and conclusions of law. The Court of Appeals is not a fact finder and, based upon exhaustive research, no other U.S. Court of Appeals has ever taken the position that, in a case before it on review, the Court of Appeals can find facts in contested matters.

III. The decision of the Court of Appeals to uphold the dismissal of Singleton's counterclaims as frivolous on an abuse of discretion standard of review without findings by the District Court as to why the counterclaims were frivolous is contrary to Rule 11 and conflicts with the holding of the Court in *Cooter & Gell* and decisions of other Courts of Appeal such as the Second Circuit.

Pursuant to Rule 11, the District Court ordered *sua sponte* that "defendants' counterclaims are DISMISSED as frivolous and designed to harass and delay." Order, filed January 6, 1999, App. 57a. The Court of Appeals upheld the dismissal of defendants' counterclaims under an abuse of discretion standard of review. Opinion of the Court, App. 18a. In so holding, the Court below misapplied the standard of review of Rule 11 sanctions established by the Court in *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384 (1990).

The Court in *Cooter & Gell* described the standard of review as follows: "[a]n appellate court should apply an abuse-of-discretion standard in reviewing all aspects of a district court's Rule 11 determination. A district court would necessarily abuse its discretion if it based its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence."

496 U.S. at 405.

Dismissal of a party's substantive claims is a serious sanction because it deprives a party of his day in court. While the Court has held that a Rule 11 sanction, which *incidentally* affects a litigant's substantive rights, does not violate the Rules Enabling Act, 28 U.S.C. § 2072, *Business Guides v. Chromatic Communications Enter., Inc.*, 498 U.S. 533 (1991), the Court has never viewed Rule 11 as a valid and lawful mechanism for denying a litigant's substantive right to his day in court on nonfrivolous claims. The Court has never endorsed dismissal of a litigant's claims *ipse dixit* merely on a conclusory finding of a district court that such claims were frivolous and baseless and interposed for an improper purpose. The Court also has never held or allowed Rule 11 dismissals of claims to be reviewed by a highly deferential "abuse of discretion" standard, as that standard is customarily applied.

Rule 11 specifically provides: "[w]hen imposing sanctions, the court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed." Fed. R. Civ. P. 11(c)(3). In this case, there was no explanation by the District Court of the basis upon which it found the claims to be frivolous. Consequently, there was no basis upon which the Court of Appeals could review the district court's determination that the counterclaims are frivolous.

The review conducted by the Court below was not the kind of review mandated by the Court, where the issue at stake is

whether a party's substantive claims for relief are frivolous or not. The review conducted by the Court below also did not comport with the standard of review conducted by other circuits where the Rule 11 sanction related to the dismissal of claims. For example, in *Mareno v. Rowe*, 910 F.2d 1043, 1047 (2d Cir. 1990), *cert. denied*, 498 U.S. 1028 (1991), the Court of Appeals stated:

> "Our review of the district court's decision to impose sanctions in the present case is in accordance with the deferential standard mandated by *Cooter & Gell.*
>
> There is no doubt that the arguments presented by Mareno were not persuasive. Nevertheless, to constitute a frivolous legal position, for purposes of Rule 11 sanction, it must be clear under existing precedents that there is no chance of success and no reasonable argument to extend, modify or reverse the law as it stands. Thus, not all unsuccessful legal arguments are frivolous or warrant sanction. The positions advanced by Mareno and his attorney, however faulty, were not so untenable as a matter of law as to necessitate sanction. Nor did they constitute the type of abuse of the adversary system that Rule 11 was designed to guard against.

Mareno, 910 F.2d at 1047 (citations omitted).

In *Sussman v. Bank of Israel*, 56 F.3d 450 (2d Cir. 1995), *cert. denied sub nom., Bank of Israel v. Lewin*, 516 U.S. 916 (1995), the Second Circuit again stated:

> Under the objective standard, in order to warrant an award of Rule 11 sanctions on the basis that a complaint is not well grounded in fact or law, "it must be" patently clear that a claim has absolutely no chance of success . . . .

Sussman, 56 F.3d at 457 (*quoting Oliveri v. Thomp n*, 803 F.2d 1265, 1274 (2d Cir. 1986)).

> Several other Circuits have distinguished between complaints and other court papers, taking the view that, whatever the analysis applicable to motions and other papers filed after the commencement of the litigation, special care must be taken to avoid penalizing the filing of a nonfrivolous complaint, for otherwise a plaintiff who has a valid claim may lose his right "to vindicate his rights in court," [cites]

Sussman, 56 F.3d at 458.

In *Caisse Nationale De Credit Agricole-CNCA v. Valcorp, Inc.*, 28 F.3d 259 (2d Cir.1994), the Second Circuit added:

> The findings of a sanctioning court must of course be sufficient to permit appellate review.

Caisse Nacional, 28 F.2d at 264-65. *See also Simon DeBartolo Group, L.P. v. Richard E. Jacobs Group, Inc.*, 186 F.3d 157 (3d Cir. 1999).

The test of frivolousness followed by the Second Circuit follows precisely the test established by the Court in *Neitzke v. Williams*, 490 U.S. 319 (1989): whether the pleading lacks "an arguable basis either in law or in fact." 490 U.S. at 325. In making a frivolousness determination, the assessment of the pleaders' actual allegations must be weighed in favor of the pleader and cannot serve as a fact finding process for the resolution of disputed facts. *Denton v. Hernandez*, 504 U.S. 25 (1992).

The District Court made no findings as to why defendant's counterclaims were frivolous. The District Court dismissed the counterclaims on the grounds that: "[b]oth counsel have engaged in name-calling, personal attacks and petty arguments and have burdened the court with repetitious arguments already

rejected. Defense counsel has filed counterclaims that *appear* frivolous and designed primarily to harass and delay a final resolution in this case." (Emphasis added) Opinion, January 5, 1999, App. 48a-53a, at 52a-53a.

An examination of the record of the submissions in the Court will reveal that defendant's counsel did not engage in such conduct. The record shows what *plaintiff's counsel said* that defendant's counsel and his associate said. In any event, that matter has nothing to do with the frivolousness of a claim. Defendant's counsel did indeed charge Marina Management with misleading the court in backdating invoices, which defendant's counsel claimed was a fraud upon the Court. However, the District Court agreed with defendant's counsel on that issue and sanctioned the other side.

Singleton's counsel did indeed claim twice ("repetitious arguments") that the "party" which brought the action was not a real party in interest. The first time the District Court sustained Singleton's argument in the case of James Creek Marina. Opinion, App. 25a. When a substituted party (Marina Management as Agent for MIF Realty) was interposed in an Amended Verified Complaint, defendant's counsel again claimed that the substituted party was not a real party in interest, a position the Court of Appeals sustained.

Neither the District Court nor the Court of Appeals articulated why the claims were frivolous. The District Court and the Court of Appeals did not, for example, find that the second and fifth counterclaims were frivolous. These courts ruled only that the claims were deficient "because of their integral relationship to the legitimate pursuit of plaintiff of this lawsuit." Order App. 48a-53a at 52a-53a; Opinion, App. 1a-20a at 19a. This "finding" has nothing to do with "frivolousness," and, in any event, the Federal Rules permit "permissive counterclaims".

When the District Court ordered defendant (and his counsel) to withdraw the "offending pleadings" under the threat of sanctions or reference to the District Court's Grievance Committee, Order, App. 41a-43a at 42a-43a, Singleton's counsel was forced to choose between giving up defendant's substantive claims to save himself from sanctions, or meet his professional responsibility to diligently and zealously protect and advance his client's interests and accept the damage to his professional reputation from a Rule 11 sanction (which had never been imposed upon him in over 30 years of litigation practice). Counsel should never have been put in that position.

Counsel, considering the evidence before him and his judgment that the claims he sought to prosecute were more than arguable, professionally was unable to abandon his client or surrender his client's substantive rights.

To try to assuage the District Court which had ruled that the boat had been lawfully seized and not to be viewed as defying the District Court, Singleton's counsel agreed to withdraw the Fourth Counterclaim believing that the relief sought from an ultimate finding of unlawful seizure would be preserved in the Fifth Counterclaim. However, the Fourth Counterclaim had not been withdrawn when the counterclaims were dismissed.

Counsel for Singleton had consistently claimed that Marina Management had no right to seize the vessel, as it was not the real party in interest, a position sustained by the Court of Appeals. The Amended Verified Complaint plainly stated that Singleton's contract with Washington D.C. Associates [not Marina Management] expired on June 6, 1996, well before the seizure. The District Court had sanctioned the Marina for backdating invoices and misrepresenting to the District Court that transient fees were charged at the time stated in the statement attached to the Verified Complaint. Singleton stated that upon of the release of his vessel from arrest, there was

damage to the vessel. Counsel then sent an associate to look at the vessel to note the damage when the boat was returned. Affidavit of Thomas J. Whalen, App. 100a. Singleton stated he was having trouble finding another berth for his vessel because the Marina's staff were defaming him as a deadbeat and an undesirable character. Affidavit of Thomas J. Whalen, App. 98a.

There was no evidence in the record that Singleton signed any contract but the one in 1994, and defendant intended to put Marina Management to its proof, but never got the chance. Depending upon the proof to be adduced, Singleton may or may not have prevailed. However the critical point is that neither the District Court nor the Court of Appeals found that these counterclaims were frivolousness or baseless. There was no disposition on the merits by summary judgment under Rule 56 or under Rule 12(b)(6). It was simply a conclusory finding without explanation by the District Court that the counterclaims were frivolous, which, on review, the Court of Appeals determined was not an abuse of discretion.

It was indeed ironic that the Court of Appeals failed to give due deference to Judge Friedman's ruling that he was misled by Marina Management's annexed statement of amounts owed, an event Judge Friedman experienced personally. The annexed statement fairly read, as Judge Friedman read it, clearly represented that from September 1995 transient fees had been charged to Singleton. The protestations of good faith and candor by Marine Management notwithstanding, *anyone*, looking at the Statement (*see* Statement, App. 73a) had to conclude that transient fees were charged to Singleton since 1995. See, for example, that on 10/31/91, an invoice D400 was issued with payment "due" on 11/10/95. How could a payment be due when it was not even billed? Judge Friedman concluded the obvious that Singleton was charged and billed for transient fees all along at least since

September, 1995 and did not pay them on or before the due date, and he was wrong *because* he was misled.

Relying on that statement of amounts owed and the verified statement of the Marina, Judge Friedman had arrested Singleton's boat and set the bond at an excessive amount which Singleton could not afford. Notwithstanding the District Court's finding that he was misled, the Court of Appeals erroneously and incredibly found that there was no factual basis for Judge Friedman's decision and the Rule 11 sanction he imposed.

Judge Friedman's ruling on the Rule 11 sanction he imposed upon the Marina should be upheld.

In the same breath, the Court below then summarily upheld Judge Friedman's Rule 11 dismissal of Singleton's counterclaims, applying a wholly deferential standard, on Judge Friedman's conclusory finding that the counterclaims were frivolous and interposed for an improper purpose. Where a Rule 11 dismissal is at issue, Rule 11(c) mandates more than a conclusory statement of frivolousness. It is submitted that Rule 11(c) requires an explanation similar in scope to that described by four Justices of the Court in *Commissioner v. Duberstein*, 363 U.S. 278, 292 (1960).

An attorney sanctioned under Rule 11 for filing "frivolous counterclaims" suffers damage to his professional reputation. Justice Stevens wrote, in his concurring and dissenting opinion in *Cooter & Gell*:

> Despite the changes that have taken place at the bar since I left the active practice 20 years ago, I still believe that most lawyers are wise enough to know that their most precious asset is their professional reputation. Filing unmeritorious pleadings inevitably tarnishes that asset.

496 U.S. at 413.

An examination of decisions of Courts of Appeals decisions applying the abuse of discretion standard since *Cooter & Gell* reveal that some of these courts are having difficulty applying this standard of review where the issue of dismissal of claims as frivolous or baseless is at stake. These courts are grappling with the problem of reconciling the highly deferential standard of abuse of discretion, (which they have traditionally applied) with their belief that they should evaluate whether the dismissed claim had an arguable basis in law and fact, rather than simply deferring to the judgment of the district court. This is not a case like many reported decisions where the claimant continues to reassert claims already determined to be without basis or merit. Such conduct is properly sanctioned under Rule 11. This is not such a case.

As Professor Lazaroff wrote: "The critical question is whether the 1993 amendments to Rule 11 will strike an acceptable balance between the need of the federal courts to be free from wasteful, frivolous, or vexatious litigation and the obligation of attorneys to represent their clients vigorously and imaginatively without fear of reprisal." Daniel E. Lazaroff, *Foreword, The Third Annual Fritz B. Burns Lecture on Rule 11 Reform: Progress or Retreat on Attorney Sanctions?*, 28 Loy. L.A. L. Rev. 1, 3 (1994).

Similarly Professor Vairo wrote: "This Author suspects that the Rule 11 battle will go on precisely because, as Judge Schwarzer predicts, we are seeing the Federal Rules of Civil Procedure being used to regulate attorney conduct. As discussed at the outset of this Article, we must question the extent to which this apparently benign trend will go too far and undermine the independence of the legal profession and our adversarial system of civil justice – a system that has advanced the law in so many important ways." Georgene M. Vairo, *The New Rule 11: Past as Prologue?*, 28 Loy. L.A. L. Rev. 39, 87 (1994). *See also* Edward D. Cavanaugh, *Rule 11 of the Federal*

Rules of Civil Procedure: The Case Against Turning Back the Clock, 162 F.R.D. 383, 397 (1995) (criticizing the abuse of discretion standard of appellate review of Rule 11 sanctions); Michael A. Annis, Note, *Civil Procedure: Cooter & Gell v. Hartmarx Corp.: An Analysis of Rule 11 and Its Appropriate Standard of Review*, 44 Okla. L. Rev. 495 (1991).

In this case, the claims alleged were carefully considered by counsel and the District Court dismissed them, *ipse dixit*, without any findings which stated the basis for the District Court's conclusion that the counterclaims were frivolous thereby tarnishing the reputation of the attorney involved. The District Court did not state, or find, as required by Rule 11(c)(3), how and why the counterclaims were frivolous or interposed for an improper purpose, i.e., to harass and delay a final resolution of the case. Without such findings or explanation, it was impossible for the Court below to review the District Court's determinations of frivolousness. The wholly deferential standard of review applied by the Court below was contrary to the abuse of discretion standard articulated by the Court in *Cooter & Gell*, and followed by Circuits like the Second Circuit in respect to the dismissal of claims under Rule 11.

CONCLUSION

The fundamental problem in this case is that both the District Court and Court of Appeals were exasperated that this seemingly simple contract dispute for moneys owed spawned such contentious litigation, expended judicial resources, and could not be resolved by the parties. In the interest of judicial expediency, it is submitted, the courts below took shortcuts to end the litigation and, in so doing, trampled over the due process rights of Singleton and the professional reputation of his counsel.

The case at bar is important, to Singleton certainly and to his counsel against whom a Rule 11 sanction has been lodged as a consequence of his faithful and zealous professional representation of his client's interests and rights.

For the Court, this case is important because it involves due process rights which the Federal Rules of Civil Procedure were designed to ensure. As the Court said just a few months ago in *Nelson v. Adams USA, Inc.*, 120 S. Ct. 1579 (2000): "The Federal Rules of Civil Procedure are designed to further the due process of law that the Constitution guarantees." *Nelson*, 120 S. Ct. at 1584. *Nelson* fundamentally stands for the proposition that the Court will not stand for judicial shortcuts which violate the Federal Rules and consequently the due process rights of litigants.

The case and the legal questions which the petitioner now brings to the Court are about judicial shortcuts which conflict with, and are inimical to, due process that the Federal Rules were designed to protect. The issues petitioner brings to the Court are uncomplicated, sharply drawn and important. They were decided in error by the Courts below and are in conflict with both the decisions of the Court and other U.S. Courts of Appeal.

The issues are also fundamental: Who has the right to bring a claim to the Federal Courts? Are facts to be decided on evidence of the quality mandated by the Federal Rules of Evidence, or are they to be decided on the basis of colloquies between judge and lawyer and the arguments and statements of counsel? When the District Judge has not resolved issues of fact on the evidence before him or her, can and should the Court of Appeals decide them?

What standards or procedure should a Federal Judge follow and what findings should he or she be required to make

under Rule 11 when determining whether a claim is baseless and frivolous and should be dismissed under Rule 11?

Does the abuse of discretion standard set by the Court in *Cooter & Gell* need to be clarified to ensure that the dismissal of claims as frivolous under Rule 11 are reviewed carefully under a proper standard established by the Court? Does such a wholly deferential standard of review of Rule 11 dismissals threaten to undermine a party's due process right to his day in court and threaten to chill his counsel's duty of faithful, enthusiastic and zealous representation?

Diligent and zealous representation by counsel within the due process confines of the Federal Rules is at the core of our adversary system and is as essential to our civil justice system as the judiciary itself. The courts below, it is submitted, have lost sight of this fact.

For the reasons set forth herein, petitioner urges that this petition for a writ of certiorari be granted.

Date: June 26, 2000

Respectfully submitted,

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued December 2, 1999 Decided February 11, 2000

No. 99-7017

MARINA MANAGEMENT SERVICES, INC.
AND LISA PETTI ELLIS,
APPELLANTS/CROSS-APPELLEES

v.

VESSEL MY GIRLS, AND
JOHN N. SINGLETON
APPELLEES/CROSS APPELLANTS

Consolidated with
No. 99-7018

Appeals from the United States District Court
for the District of Columbia
(No.97cv00423)

Lisa P. Ellis argued the cause and filed the brief for appellants/cross-appellees.

Thomas J. Whalen argued the cause and was on the briefs for appellees/cross-appellants.

Before: EDWARDS, *Chief Judge,* ROGERS and TATEL, *Circuit Judges.*

Opinion for the Court filed by *Circuit Judge* ROGERS.

ROGERS, *Circuit Judge*: In this appeal and cross appeal from the grant of summary judgment to Marina Management Services, Inc., and the dismissal of John N. Singleton's counterclaims, we confront a long-pending dispute arising from efforts to collect money due by Singleton for the lease of a boat slip in the James Creek Marina in the Southwest quadrant of the District of Columbia. Regrettably, various settlement efforts did not succeed, and our review results in a remand of the case to the district court. The district court previously addressed Singleton's contention that the original plaintiff, James Creek Marina, was not the real party in interest under Fed. R. Civ. P. 17(a). *James Creek Marina v. Vessel My Girls,* 964 F. Supp. 20, 21 (D.D.C. 1997). Notwithstanding the filing of an amended complaint with a new plaintiff, Rule 17(a) concerns remain because the record does not indicate that the new plaintiff-"Marina Management Services, Inc., as agent for MIF Realty, LP"-is the real party in interest or authorized to sue on behalf of the real party in interest; hence the district court erred in dismissing Singleton's motion to dismiss the amended complaint under Rule 17(a). In addition, the district court's finding of a bad faith misrepresentation by Marina Management is unsupported by evidence sufficient for imposition of a sanction of a $20,000.00 reduction in the attorneys' fee award. Accordingly, although the district court did not err in finding that Singleton's contract extended beyond June 1996, or abuse its discretion in dismissing Singleton's counterclaims, we affirm in part and reverse in part.

I.

John N. Singleton entered into an Annual Boat Storage License Agreement ("License Agreement") to lease a slip for his boat at the James Creek Marina. The License Agreement, which was signed by Singleton and the manager of the James Creek Marina, was for the period April 1, 1994 to March 31,

1995, and was extended by the parties. Under the License Agreement, Singleton, the Licensee, agreed to make monthly payments of $181.50 for the boat slip, and by the terms of § 19, upon 15 days' delinquency of a monthly installment, he would become, at the Licensor's option, "subject to a day-to-day license at the Transient (Daily) Rate posted in the Marina's offices, with such changes to take effect automatically and without further notice to Licensee." The transient rate charges were substantially higher than the monthly payment.[1] It is undisputed that Singleton became delinquent in paying his slip fees as early as 1995.[2]

On March 3, 1997, the James Creek Marina filed a verified complaint under 46 U.S.C. § 31342(a)[3] for a lien against Singleton's boat and a money judgment of $26,015.67, plus future daily lease charges, marina fees, legal fees, and costs. Exhibit C to the complaint reflected as of February 28, 1997,

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[1] The transient rate is $0.75 per foot per day; because Singleton's boat is 34 feet long, his transient rate was $25.50 per day.

[2] Marina Management received payments from Singleton of $181.50 on April 16, 1994, and $800.00 on August 22, 1995. However, Marina Management asserts that when the latter payment was made, Singleton was already in arrears of $3,989.17 and because his one-year prepayment was put on an invalid MasterCard account, he was "effectively in default from the first day of the [License] Agreement," thus making transient rates applicable as of April 1, 1994.

[3] Section 31342(a) provides, in relevant part:

> (a) . . . a person providing necessaries to a vessel on the order of the owner or a person authorized by the owner -
>
> (1) has a maritime lien on the vessel;
>
> (2) may bring a civil action in rem to enforce the lien; and
>
> (3) is not required to allege or prove in the action that credit was given to the vessel.

46 U.S.C. § 31342(a) (1999).

both past due monthly slip fees and transient rate charges. By *ex* parte order, the district court directed the arrest of Singleton's boat. After a hearing, the court set the bond at $20,542.67 (plus 12% for interest and court costs), "based only upon the unpaid monthly fees and subsequent unpaid transient fees." When the district court became aware that Exhibit C did not reflect the invoices that the marina had actually sent to Singleton before the lawsuit was filed, the court reduced the bond to $6,728.17 (plus 12% for interest and court costs) and reduced the attorneys' fee award under the License Agreement by $20,000.00 as a sanction against Marina Management for having misled the court. In the meantime, Singleton filed five counterclaims, which the district court dismissed as harassing and designed to delay resolution of the litigation.

We address in Part II, the real party in interest claim and the contract issues, in Part III, the sanction for misleading the court, and in Part IV, the dismissal of Singleton's counterclaims.

II.

Following the district court's ruling that the James Creek Marina was not the real party in interest under Fed. R. Civ. P. 17(a)[4] *see James Creek Marina,* 964 F. Supp. at 22, an

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[4] Rule 17(a) provides that:

Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in that person's own name without joining the party for whose benefit the action is brought; and when a statute of the United States so provides, an action for the use or benefit of another shall be brought in the name of the United States. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest. Fed. R. Civ. P. 17(a).

amended verified complaint was filed in which the plaintiff was identified as "Marina Management Services, Inc., as agent for MIF Realty, L.P., d/b/a James Creek Marina." Singleton renewed his motion to dismiss the complaint on several grounds. The district court denied the motion by summary order. On cross appeal, Singleton contends that the district court erred in denying his motion and in granting summary judgment to Marina Management on the debt because an agent cannot sue for a disclosed principal, and there is no evidence that MIF Realty, LP had acquired the contract rights between Singleton and the James Creek Marina for any preexisting debt, or that there was an outstanding contract after June 1996.

A.

Rule 17(a) protects a defendant against a subsequent claim for the same debt underlying a previously entered judgment. See, e.g., *United Fed'n of Postal Clerks, AFL-CIO v. Watson,* 409 F.2d 462, 470-71 (D.C. *Cir.* 1969). That understanding was reflected in the district court's opinion addressing Singleton's motion to dismiss the original complaint under Rule 17(a). *See James Creek Marina*, 964 F. Supp. at 22. Although there is a lack of consensus in the case law regarding whether an "agent" authorized to sue based solely on a power of attorney is a real party in interest under Rule 17(a),[5] the operative question is whether the plaintiff "possesses the right to be enforced." *Best v. Kelly,* 39 F.3d 328, 329 (D.C. Cir. 1994) (quoting Charles A. Wright, Law of Federal Courts 490

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[5] *Compare Advanced Magnetics, Inc. v. Bayfront Partners, Inc.*, 106 F.3d 11, 17-18 (2d Cir. 1997); *Airlines Reporting Corp. v. S and N Travel, Inc.*, 857 F. Supp. 1043, 1046-47 (E.D.N.Y. 1994) (Weinstein J.) (citing *Titus v. Wallick*, 306 U.S. 282 (1939)); *Corporation of the President of the Church of Jesus Christ of Latter Day Saint v. Envtl. Protection Comm'n of Hillsborough County*, 837 F. Supp. 413. 415 (M.D. Fla. 1993); *Mitsui & Co. (USA), Inc. v. Puerto Rico Water Resources Auth.*, 528 F. Supp. 768, 776 (D.P.R. 1981).

(1954)); *see also Joyner v. F & B Enterprises, Inc.*, 448 F.2d 1185, 1186 (D.C. Cir. 1971); 6A Wright, Miller, and Kane, Fed. Prac. and Proc. Civ.2d §§ 1545, 1553.

As the caption of the amended complaint and the record appears to show, the stakeholder vis-a-vis Singleton's boat slip debt is MIF Realty, LP.[6] Marina Management purports only to be acting as an agent for MIF Realty, LP, which as principal allegedly "possesses the right to be enforced." *Best,* 39 F.3d at 329. Assuming MIF Realty, LP is the stakeholder for Singleton's debt, there is nothing in the record to show that Marina Management is authorized to prosecute the instant lawsuit. Under the terms of a 1997 operating agreement, MIF Realty, LP authorized Marina Management to enforce license obligations of James Creek Marina tenants and "at the direction of Owner take such actions as may be necessary to effectuate Owner's rights under any such license agreement." The operating agreement further provides that "[o]perator acknowledges that, except as otherwise expressly provided for herein, the initiation and prosecution of lawsuits shall require the prior written consent of Owner . . ." *Id.* ¶ 2.5. The record provides no evidence of written consent by MIF Realty, LP for Marina Management to sue Singleton for his boat slip debts. Neither is there an affidavit from MIF Realty, LP indicating consent or ratification of this lawsuit. *See, e.g., Associated Ins.*

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[6] Exhibit D to Marina Management's opposition to the motion to dismiss states the following: in 1988, the National Park Service, which owns the James Creek Marina, and Marine Management, Inc., entered into a concession agreement that was later assigned to Washington, D.C. Associates ("WDCA"). Following a number of assignments of interest in the concession agreement, and due to the later bankruptcy of WDCA, MIF Realty, LP acquired the concession rights to the James Creek Marina in September 1996. *See infra* n.7. MIF Realty, LP engaged Westrec Marina Management to operate the marina. In February 1997, MIF Realty, LP terminated Westrec and hired Marina Management Services, Inc. to operate the marina.

Mgmt. Corp. v Arkansas Gen. Agency, Inc., 149 F.3d 794, 797 (8th Cir. 1998)(citing Fed R. Civ. P. 17(a)). Nor is there a statement in the judgment of the district court that would protect Singleton against a subsequent claim by MIF Realty, LP for the debt that Marina Management seeks to recover. *Cf. Watson*, 409 F.2d at 470-71.

Accordingly, we reverse the denial of Singleton's motion to dismiss the amended complaint for noncompliance with Rule 17(a), and remand the case to allow Marina Management to supplement the record or file a second amended complaint.

B.

Singleton also contends that the district court erred in granting summary judgment to Marina Management on the debt because there is no evidence that MIF Realty, LP had acquired the contract rights for any preexisting indebtedness for the boat slip and no evidence of an outstanding contract between Singleton and the real party in interest after the License Agreement expired in June 1996. Marina Management, in turn, contends that the district court erred in denying its claim for transient rate charges. Our review of the grant of summary judgment is *de novo*, viewing the record in the light most favorable to the nonmoving party to determine whether there is a genuine issue of material fact as would make summary judgment inappropriate, *See Aka v. Washington Hosp. Ctr.*, 156 F.3d 1284, 1288 (D.C. Cir. 1998) (en banc).

As to the past due slip fees, Singleton maintains that there is no evidence that either Marina Management or MIF Realty, LP was the party to whom he is indebted for the slip fees, or that MIF Realty, LP had acquired the past debts of the James Creek Marina. In his motion to dismiss the amended complaint, Singleton argued that there was no evidence that MIF Realty purchased debts owed Washington, D.C. Associates or that Washington D.C. Associates assigned MIF

Realty, LP the rights in its contracts with Singleton. In opposing the motion, Marina Management submitted Exhibit D purporting to list the owners and managers of James Creek Marina since September 1988.[7] Further, Marina Management recited its efforts to provide Singleton's attorney with direct access to documents and persons who could review the chain of ownership. Singleton, in his response, demanded proof that MIF Realty, LP "has the legal right to any past obligations and current obligations" of Singleton.

The district court made no express finding that MIF Realty, LP had acquired the marina's outstanding debts and there are no documents in the record to substantiate the assertions in Exhibit D. While mere allegations may be sufficient to defeat a motion to dismiss, *see Hanson v. Hoffmann,* 628 F.2d 42, 43 (D.C. Cir. 1980); *see also Maljack Prods., Inc.,* 52 F.3d 373, 375 (D.C. Cir. 1995), summary judgment was inappropriate in the absence of proof that MIF Realty, LP has the right to recover debts incurred by Singleton prior to September 1996 when MIF Realty, LP obtained the concession contract. *See Crawford v. Signet Bank,* 179 F.3d 926, 928 (D.C. Cir. 1999).

Singleton's contention that a second material issue of disputed fact involves whether the License Agreement was extended beyond June 1996 fails, however. In the district

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[7] Exhibit D states the following: Home Savings Association of Kansas City, F.A. ("HSA"), which formerly held an interest in WDCA's concession contract with National Park Service as security for a note it held on WDCA, was taken into receivership by the Resolution Trust Corporation ("RTC"). On April 16, 1993, all of HSA's "rights in the James Creek Marina interest" in the concession contract were assigned by the RTC to MIF Realty, LP. When WDCA filed for bankruptcy in June 1996, MIF Realty filed a Proof of Claim, and "[p]ursuant to a Joint Plan of Reorganization proposed by [WDCA] and MIF Realty, LP, MIF Realty [was] given ownership . . . of *inter alia*, the James Creek Marina interest" in the concession contract on September 2, 1996.

court, Singleton's attorney advised the court that the parties had extended their agreement in June 1996. In granting summary judgment of $7,663.21 for Marina Management, the district court apparently relied on Singleton's attorney's oral representation regarding the continuing viability of the Licensing Agreement after June 1996, using Singleton's statement of February 26, 1997, listing the amount of his debt. Singleton's attorney informed this court at oral argument that he was mistaken in representing to the district court that the parties' agreement had been extended in June 1996. His change of position comes too late: having conceded the fact of extension in the district court, he cannot alter the record now. *See, e.g., United States* ex rel. *Yesudian v. Howard University,* 153 F.3d 731, 748 (D.C. Cir. 1998) (citing *Keller v. United States,* 58 F.3d 1194, 1198 n.8 (7th Cir. 1995)); *United States v. Ins. Co. of North America,* 83 F.3d 1507, 1510 n.6 (D.C. Cir. 1996): *McNamara v. Miller*, 269 F.2d 511. 515 (D.C. Cir. 1959).

Nevertheless, because the record does not reflect a basis on which to conclude that MIF Realty, LP is entitled to recover past-due amounts from Singleton for use of the James Marina Creek boat slip, we are constrained to reverse the grant of summary judgment. In addition, in response to Marina Management's contention that it was entitled to recover transient rate charges, the district court shall consider on remand whether the plain language of the License Agreement entitles recovery for the transient rate charges reflected in Exhibit C. Although the district court ruled that Marina Management had failed to exercise its option under § 19 of the License Agreement because it had not previously billed Singleton at the transient rate, our disposition of the sanction based on Exhibit C to the complaint in Part III warrants that the district court consider anew the claim for transient rate charges based on the plain language of § 19 and the unrefuted evidence that Singleton received oral notice.

III.

At the heart of Marina Management's appeal is its contention that the district court clearly erred in viewing Exhibit C to the complaint-the February 28, 1997, invoice--as a misrepresentation, and thus abused its discretion by imposing a sanction of $20,000.[8] Although our review under an abuse of discretion standard is highly deferential, *see In re Holloway*, 995 F.2d 1080, 1086 (D.C. Cir. 1993); *Founding Church of Scientology of Washington, D.C., Inc. v. Webster*, 802 F.2d 1448, 1457 (D.C. Cir. 1986), if the district court's action is based on a clearly erroneous finding of fact, that action is an abuse of discretion. *See Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 405 (1990); *F.J. Vollmer Co., Inc. v. Magaw*, 102 F.3d 591, 596 (D.C. Cir. 1996).

The verified complaint stated that under 46 U.S.C. § 31342(a) and the License Agreement, there was a valid maritime lien against Singleton's boat and an in personam contractual claim against Singleton for the unpaid costs of "necessaries," totaling $26,015.67, as of February 28, 1997, plus $25.50 per day for each day thereafter, plus fees, attorneys fees, and costs. Attached to the complaint was Exhibit C, a copy of a February 28, 1997, invoice from the marina for $22,065.67 that was sent to Singleton. The invoice reflected eighteen monthly lump-sum charges for slip fees at the daily transient rate from October 1995 through March 1997. The district court issued an *ex parte* order for the arrest of Singleton's boat on March 5, 1997, and, thereafter, pursuant to

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[8] In light of our disposition of the sanction, we need not address Singleton's contention that Marina Management's counsel, Lisa Petti Ellis, who also appeals the sanction, lacks standing to appeal because the sanction was imposed against the client and not its attorney. Cf. *Ass'n of Am. Physicians and Surgeons v. Clinton*, 187 F.3d 655, 660 n.4 (D.C. Cir, 1999).

Admiralty Rule E(5)(a), determined that the amount of security that Singleton would be required to post in order to regain possession of his boat was $20,542.67.[9]

Singleton moved for reconsideration of the bond amount, arguing that, contrary to the district court's finding, Singleton had not been billed in 1995 and thereafter for transient rate charges, that Exhibit C was prepared for purposes of the litigation, and that his "account history was *altered* to reflect transient rates *never charged* to the defendant." Because the monthly invoices sent to Singleton did not reflect transient fees, Singleton's counsel maintained that Marina Management "clearly intended and did in fact mislead the Court," and, consequently, the bond calculated on the transient fees was not in an amount of Marina Management's claim "'fairly stated'" under Rule E(5)(a). In response to the district court's inquiry whether the inclusion of the transient rate charges shown in Exhibit C represented double billing, Marina Management's attorney advised that there was no double billing because under the Licensing Agreement, transient charges, as reflected in Exhibit C, are over and above the monthly rate. When Singleton's attorney objected that imposition of the transient rate charge was not in the contract and was not a "necessary" but "a big penalty," Marina Management's attorney interjected that the transient rate was in the License Agreement.

Agreeing with Singleton's assertions, the district court reduced the bond to $6,728.17, based largely on a February 26, 1997, statement provided by Singleton showing the outstanding

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[9] The district court initially set the bond amount based on the monthly charge and transient rate charges over and above the monthly fees dating back to September 1995, and other miscellaneous fees. The monthly charge consisted of the $181.50 rate in the Licensing Agreement, which included a $16.50 credit contingent upon Singleton's prepaying the entire amount in advance; because he did not prepay, the monthly charge was $198.

balance through March 1997 to be $5,936.17, and $792.00 in monthly slip fees of $198.00 incurred thereafter. After issuing an order to show cause "as to why sanctions should not be levied against plaintiff and its counsel for having misled the Court," the district court reduced the amount of attorney's fees to be recovered by Marina Management by $20,000. The district court found that:

> The Court was misled by [Exhibit C] into believing that transient fees actually were levied and billed to [Singleton] on the dates listed in . . . [E]xhibit [C]. In addition, this was suggested, if not argued, in papers filed with the Court and during oral argument, and therefore was relied upon by the Court in calculating the amount of security . . .[Marina Management] now admits that transient fees were never charged before the start of this litigation. . . . The Court was misled by the statement [that Marina Management] provided with its Verified Complaint and the arguments presented to it.

On appeal, Marina Management contends that there is no evidence of intentional misrepresentation or violation of Fed. R. Civ. P. ll,[10], or any rule of professional conduct, inasmuch

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[10] Rule 11(b) provides in pertinent part:

> By presenting to the court . . . a pleading . . . or other paper, an attorney . . . is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,--
>
> . . .
>
> (2) the claims . . . are warranted by existing law. . .;
>
> (3) the allegations and other factual contentions have evidentiary support . . .

Rule 11(c) provides for the imposition of sanctions for violation of subsection (b).

Fed. R. Civ. P. 11 (1999).

as Exhibit C was a good faith interpretation of the parties' agreement. Maintaining that it read the Licensing Agreement to allow retroactive assessment of transient rate charges, and that, even if it erred in its reading, there was abundant evidence of its good faith, Marina Management relies on three facts in particular. First, Singleton was notified by letter terminating his license effective January 31, 1997, that under District of Columbia law he was at a minimum a hold-over tenant and marina could charge the transient rate for continued use and occupancy of the boat slip. Second, the affidavit of the marina dock master, Steve Wiltamuth, stated that Singleton was given "constant verbal and oral notice that transient fees were going to be assessed against him if he failed to pay his marina bill." Third, there was other evidence that the marina had notified Singleton prior to assessing transient fees that it was going to do so, and that it notified Singleton's attorney of previous invoices that did not include transient rate charges. In other words, Marina Management maintains, the language of the Licensing Agreement, specifically § 19, authorized retroactive transient charges; Marina Management had exercised its option to impose such charges, giving Singleton notice beyond that required by § 19 itself; and Singleton's attorney could not reasonably argue that Exhibit C represented anything other than Marina Management's computation of its full claim in admiralty under the parties' agreement.

Rule E for admiralty and maritime claims contemplates *ex parte* proceedings for the arrest of property based on the filing of a complaint. *See* Supp. R. Adm. E(2).[11] Rule E(5)(a)

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[11] Rule E(2)(a) provides

In actions in which this rule is applicable the complaint shall state the circumstances from which the claim arises with such particularity that the defendant or claimant will be able, without moving for a more definite statement, to commence an investigation of the facts and to frame a responsive pleading.

provides that unless a bond amount is agreed to by the parties, "the court shall fix the principal sum of the bond or stipulation at an amount sufficient to cover the amount of the plaintiffs claim fairly stated with accrued interest and costs; but the principal sum shall in no event exceed (i) twice the amount of the plaintiffs claim or (ii) the value of the property on due appraisement, whichever is smaller."[12] A person claiming interest in arrested property is entitled to "a prompt hearing at which the plaintiff shall be required to show why the arrest . . . should not be vacated or other relief granted. . . ." Supp. R. Adm. E(4)(f).

The record indicates that the district court's conclusion that it was misled was distinct from its concern about whether there was double charging. Rather, that conclusion reflected the district court's view that it was led to understand that Exhibit C was a summary of the invoices that had actually been sent to Singleton while he had used a boat slip at the James

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[12] Rule E(5)(a) on specific bonds provides that arrested property may be released upon

> the giving of security, to be approved by the court . . . or by stipulation of the parties, conditioned to answer the judgment of the court or of any appellate court . . . In the event of the inability or refusal of the parties so to stipulate the court shall fix the principal sum of bond. . . at an amount sufficient to cover the amount of the plaintiff's claim fairly stated with accrued interests and costs; but the principal sum shall in no event exceed (i) twice the amount of the plaintiff's claim or (ii) the value of the property on due appraisement, whichever is smaller.

Rule E(5)(b) on general bonds provides that the owner:

> may file a general bond or stipulation, with sufficient surety, to be approved by the court, conditioned to answer the judgment of such court in all or any actions that may be brought. . . .

The rule further provides that "the execution of all such process against such vessel shall be stayed so long as the amount secured by such bond . . . is at least double the aggregate amount claimed by plaintiffs in all actions ... in which such vessel has been . . . arrested.

Creek Marina, or as Singleton's attorney asserted, Exhibit C purported to be the marina's "account history" with Singleton. Upon determining that Singleton had not been billed for transient rate charges prior to February 28, 1997 (the date of the Exhibit C invoice), the district court concluded that Exhibit C not only misstated the amount that Singleton owed but was, in effect, intentionally designed to mislead the court. Even assuming no error in the district court's ruling that Marina Management misinterpreted its rights under the License Agreement, it does not necessarily follow that Marina Management acted in bad faith with respect to what Exhibit C represented. *See Lipsig v. Nat'l Student Mktg. Corp.*, 663 F.2d 178, 181 (D.C. Cir. 1980).

Viewed in the context of an admiralty proceeding, it was incumbent on Marina Management under Rule E to state the amount of its claim with particularity, indicating the basis for arriving at that amount, inasmuch as Singleton and the marina could not agree on the amount of the bond to be posted to secure release of his boat. *See* Supp. R. Adm. E(2)(a), *supra* n.11. Our own experience during oral argument suggests that neither counsel may have been particularly helpful in assisting the district court in understanding Exhibit C's limited purpose in support of the claimed lien. Be that as it may, we still do not find evidence of bad faith, much less an intentional misrepresentation, *see United States v. Wallace*, 964 F.2d 1214, 1218 (D.C. Cir. 1992) (citing *Roadway Express Inc. v. Piper*, 447 U.S. 752, 767 (1980)), about what Exhibit C purported to show.

Exhibit C is clearly labeled and dated, and referenced in the complaint solely in connection with Marina Management's statement of its claim under 46 U.S.C. § 31342(a) and the Licensing Agreement. Exhibit A to the complaint referenced Singleton's ownership of the boat using the boat slip at the James Creek Marina, and Exhibit B to the complaint was the

Licensing Agreement dated March 1, 1994. The four page "Statement" in Exhibit C was addressed to Singleton from the marina and listed the charges, payments, and balance due as of each monthly payment date and the end of the month from March 1994 through February 1997.

Marina Management explained in its opposition to Singleton's motion to reconsider the bond amount that although, in the interests of trying to resolve this matter informally it had not previously charged Singleton the transient rate, it had not waived its right to the full amount negotiated in the Licensing Agreement, which provided, in § 19, that such rates may be applied "at the Licensor's option" and "without further notice to Licensee." In Marina Management's view, the transient rates in the License Agreement became part of the maritime lien for "necessaries," citing *Hudson Harbor 79th Street Boat Basin, Inc. v. Sea Casa,* 469 F. Supp. 987, 1979 AMC 2401 (S.D.N.Y. 1979), inasmuch as § 20 of the License Agreement provided that the lien for necessaries shall include "all unpaid charges."

Furthermore, Marina Management's conduct belies an intention to mislead. First, the transcript[13] reveals no affirmative misstatement by Marina Management that Exhibit C was Singleton's account history. The district court was concerned about whether the Exhibit C invoice reflected double charges--the transient rate charge in addition to the monthly fee--for the same services. Marina Management's attorney explained that "if the transient rate is a dollar per foot per day and the monthly

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[13] The only transcript in the record on appeal is for May 22, 1997. where the district court first sought to determine whether the case could be settled. The court, having previously dismissed the case on April 30, 1997, and having learned that settlement efforts were unproductive, then responded to Singleton's request for release of his boat pursuant to Rule E(5)(a) & (b) and to Singleton's motion to dismiss for failure to comply with Rule 17 (a).

fee is $198, then obviously you subtract that [$]198 from whatever the dollar per foot per day is." Thereafter, the district court acknowledged that the amount of the bond is tied to the amount of Marina Management's claim and determined "an appropriate bond . . . [based on] what a 'necessary' is." The record on appeal reflects that Marina Management's attorney was not asked if, and did not volunteer that, Exhibit C was an account history.

Second, the record does not show that Marina Management or its attorney implied that Singleton had been billed for transient rate charges prior to February 1997. The undisputed facts that Marina Management provided Singleton's attorney with copies of the invoices sent to Singleton prior to February 1997 and the commencement of the instant litigation, and that those invoices do not reflect transient rate charges, are inconsistent with an intent to create the impression that such charges had been part of the regular prelitigation billing history.

Third, to the extent that Exhibit C on its face could be mistaken for an account history, the mere appearance of Exhibit C did not amount to an affirmative misrepresentation in view of Marina Management's independent reason for itemizing the amount it claimed was due and owing under Supp. R. Adm. E(2)(a), *supra* n.11. Cf Wallace, 964 F.2d at 1219-20 (quoting RESTATEMENT (SECOND) TORTS § 500 cmt. *g* (1964)). While, as a matter of prudent legal practice, Marina Management might have better clarified precisely what Exhibit C represented, the record does not support a finding of a bad faith misrepresentation by Marina Management or its attorney that Singleton had been presented with invoices for transient rate charges prior to February 28, 1997.

Accordingly, in the absence of a factual basis for the sanction we remand the case so that the district court may enter an order vacating the sanction.[14]

IV.

On cross appeal, Singleton contends that the district court erred in *sua sponte* dismissing his counterclaims as mostly frivolous and designed primarily to harass and delay. Our review is for abuse of discretion, *see Rafferty v. NYNEX Corp.*, 60 F.3d 844, 851 (D.C. Cir. 1995) (citing *Cooter & Gell v. Hartmax Corp.*, 496 U.S. 384, 405 (1990)), and we find none.

In his amended answer, Singleton counterclaimed for property damage to the vessel and missing property (Counterclaim 1), defamation (Counterclaim II), intentional interference with prospective contractual relations (Counterclaim III), wrongful seizure of the vessel (Counterclaim IV), and abuse of process (Counterclaim V). Singleton sought $200,000.00 in damages, costs, and attorney's fees. The district court observed in dismissing the counterclaims that:

> [b]oth counsel have engaged in name-calling, personal attacks and petty arguments and have burdened the Court with repetitions of arguments already rejected. Defense counsel has filed counterclaims that appear frivolous and designed primarily to harass and delay a final resolution of this case.

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[14] In view of our remand of the case for a determination of who is the proper plaintiff under Rule 17(a) and an order vacating the sanction, we do not address the merits of either Marina Management's contention that the district court erred in denying recovery of certain fees or Singleton's contention that the amount of attorney's fees awarded "was" excessive because a substantial amount pertained to work associated with the sanction issue. These are matters to be resolved on remand.

The district court noted that Singleton had withdrawn the counterclaim for wrongful seizure, and that the counterclaims for defamation and abuse of process were "deficient because of their integral relationship to the legitimate pursuit by plaintiff of this lawsuit." Viewed in the context of the conduct of both counsel, the district court concluded that "all of the counterclaims should be seen as designed primarily to harass," and that "all five counterclaims therefore are properly dismissed under Rule 11 of the Federal Rules of Civil Procedure."

"[T]he central purpose of Rule 11 is to deter baseless filings in district court and thus . . . streamline the administration and procedure of the federal courts." *Cooter & Gell,* 496 U.S. at 393 (quoting Advisory Committee Note on Rule 11, 28 U.S.C. App. p. 576). Dismissal is a legitimate sanction under Rule 11, *see Carman v. Treat*, 7 F.3d 1379, 1382 (8th Cir. 1993); *Rhineheart v. Stauffer*, 638 F.2d 1169, 1171 (9th Cir. 1979), for serious misconduct when lesser sanctions would be ineffective or are unavailable. *See Dodson v. Runyon*, 86 F.3d 37, 39-40 (2d Cir. 1996); *Henry v. Gill Indus., Inc.*, 983 F.2d 943, 948 (9th Cir. 1993). The record supports the district court's finding that the counterclaim for abuse of process was legally deficient because of its close connection with a good faith action for recovery of a debt. *See Scott v. District of Columbia*, 101 F.3d 748, 755 (D.C. Cir. 1996); *Croixland Properties Ltd. Partnership v. Corcoran*, 174 F.3d 213, 215 (D.C. Cir. 1999). So too, the district court could reasonably conclude that Singleton's defamation claim, which included allegations not necessarily integrally linked to the legitimacy of the debt recovery action, nonetheless was "designed primarily to harass" in view of "the petty . . . conduct of counsel for both parties. . . .," as were his counterclaims for property damage and for intentional interference with contractual relations. Marina Management presented multiple affidavits calling into

serious doubt Singleton's property damage claim. Without weighing the merits, this peek at the evidence, *cf, e.g., Massachusetts School of Law at Andover, Inc. v. United States*, 118 F.3d 776, 783 (D.C. Cir. 1997); *Air Line Pilots Ass'n Int'l v. Eastern Air Lines, Inc.*, 869 F.2d 1518, 1521 (D.C. Cir. 1989), confirms that given the contentious history of this unduly prolonged litigation, *see McLaughlin v. Bradlee*, 803 F.2d 1197, 1205-06 (D.C. Cir. 1986), the district court did not abuse its discretion.

Accordingly, we reverse the grant of summary judgment, remanding Marina Management's case to the district court, and affirm the dismissal of the counterclaims.

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT
September Term, 1999

No. 99-7017

Marina Management Services, Inc. and
Lisa Petti Ellis,
Appellants/Cross-Appellees

v.

Vessel My Girls, and John N. Singleton
Appellees/Cross-Appellants

Consolidated with 99-7018

Appeals from the United States District Court
for the District of Columbia
(No. 97cv00423)

Before: EDWARDS, *Chief Judge*, ROGERS and TATEL, *Circuit Judges*.

JUDGMENT

These causes came to be heard on the record on appeal from the United States District Court for the District of Columbia and were argued by counsel. On consideration thereof, it is

ORDERED and **ADJUDGED**, by the Court, that the judgment of the District Court appealed from in these causes is hereby affirmed in part and reversed in part, in accordance with the opinion for the Court filed herein this date.

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/ Robert A. Bonner
Robert A. Bonner Deputy Clerk
Deputy Clerk

Date: February 11, 2000
Opinion for the court filed by Circuit Judge Rogers.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CIVIL ACTION NO: 97-0423 (PELF)

JAMES CREEK MARINA
Plaintiff

v.

VESSEL MY GIRLS,
(a.k.a. MY GIRL II and JENNY LYNN)
Official No: 659523
Her Engines, Masts, Anchors, Cable, etc.,

IN REM

and

JOHN SINGLETON, *IN PERSONAM*
Defendants

March 5, 1997

ORDER FOR ARREST

Upon reviewing the Verified Complaint and supporting papers of James Creek Marina, and it appearing that the conditions for an action *in rem* exist, it is this 5th day of March, 1997,

ORDERED,

(1) that the Clerk of the United States District Court for the District of District of Columbia be authorized and directed to prepare a Warrant for the Arrest of the Vessel MY GIRLS, (a.k.a MY GIRL II and JENNY LYNN), Official No: 659523

and deliver it to the United States Marshal for the District of Columbia; and

(2) that the United States Marshal thereupon arrest the Vessel MY GIRLS, (a.k.a MY GIRL II and JENNY LYNN), Official No: 659523 and provide notice of the commencement of this action to the custodian of the Vessel MY GIRLS (a.k.a MY GIRL II and JENNY LYNN), Official No: 659523 by delivering a copy of the Warrant of Arrest to the custodian; and

(3) that plaintiff, James Creek Marina ("James Creek"), shall proceed to give notice of this suit's commencement to the individual defendant and any lien holders by service of process of the Verified Complaint, Motion for Appointment of Substitute Custodian, Declaration of Substitute Custodian, and proposed Orders of Arrest and Appointment of Substitute Custodian, along with a Notice of Lawsuit and Request for Waiver of Service of Summons or a Summons issued by the Clerk of this Court upon them, in accordance with Rule 4 of the Federal Rules of Civil Procedure.

/s/ Paul L. Friedman
Judge, United States District Court
for the District of Columbia

United States District Court,
District of Columbia
- 964 F.Supp.20 -
May 29, 1997.

JAMES CREEK MARINA, Plaintiff

v.

VESSEL MY GIRLS (a.k.a. My Girl II and Jenny Lynn) ***In Rem*****, and John Singleton In Personam, Defendant.**

Civil Action No. 97-0423 (PELF).

Lisa Petti Ellis, Ellicott City, MD, for plaintiff.

Thomas J. Whalen and Evelyn D. Sahr, Washington DC, for defendants.

MEMORANDUM OPINION AND ORDER

PAUL L. FRIEDMAN, District Judge.

On March 5, 1997, the Court issued an *ex parte* order for arrest of the vessel My Girls, pursuant to Rule C(3) of the Supplemental Rules to the Federal Rules of Civil Procedure for Certain Admiralty and Maritime Claims, on plaintiff's filing of a verified complaint alleging that defendant John Singleton had failed to pay boat storage fees. On April 30, 1997, the parties filed a praecipe stating that a settlement had been reached and that settlement documents were being finalized. The Court therefore entered an Order dismissing the case without prejudice to enable the parties to consummate the settlement. After a thirty-day period, the case would have been dismissed with prejudice if the parties had not moved to reopen.

Prior to the consummation of the settlement, defendant filed a Motion for Relief from the Court's Order of Dismissal and a Motion for Prompt Hearing, alleging that plaintiff was not a legally cognizable entity with the capacity to sue–or to settle. On May 22, 1997, the Court held a status conference and directed the parties to report to Magistrate Judge Alan Kay in order to make one last attempt at settlement. After these settlement discussions failed, the Court convened a hearing later that day to consider: (1) defendant's Motion for Relief; (2) whether the arrest of the vessel should be vacated pursuant to Rule E(4)(f), Supp. R. Adm.; and (3) whether to release the boat upon the posting of a proper bond pursuant to Rule E(5), Supp. R. Adm. At the hearing, the Court stated its intention to grant plaintiff's motion to vacate dismissal and reopen the case.

Upon consideration of the arguments presented by counsel, the exhibits submitted by plaintiff during argument and all of the papers filed in this matter, it is not entirely clear who is the real party in interest for purposes of prosecuting this case. The Application for License is captioned "James Creek Marina." Verified Complaint, Ex. B. The Annual Boat Storage License Agreement and the Addendum to the Agreement seem to identify James Creek Marina as the entity making the agreements. They are headed "James Creek Marina," but the headers of both documents also indicate that James Creek Marina is "operated by Westrec Properties, Inc. for National Park Service" *Id.* The Addendum is signed by the manager of James Creek Marina. *Id.* At the same time, the Licensor identified in the Agreement itself is "Washington D.C. Associates, a California general partnership," located at James Creek Marina. *Id.* The body of the Agreement states that the "Licensor is the Concessioner and operator of James Creek Marina." *Id.* Plaintiff's Exhibit 2, submitted during oral argument, is a receipt apparently issued to John Singleton and headed "James Creek Marina, A Westrec Property." Pl. Ex. 2.

Plaintiff's Exhibit 3, also submitted during argument, is a 1988 concession contract between the United States Department of the Interior, National Park Service and "Marine Management, Inc.–d.b.a. James Creek Marina." Pl. Ex. 3.

From the evidence before it, the Court concludes that James Creek Marina is, at best, a business name, not a corporation or a partnership. At worst, it is merely a physical location operated by as many as three different companies at various times. Rule 17(a) of the Federal Rules of Civil Procedure provides that a real party in interest authorized to prosecute a lawsuit may be "[a]n executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute . . ." There is no evidence that James Creek Marina is any of the persons or entities listed in Rule 17(a), Fed.R.Civ.P., or that it is an individual, a corporation, a partnership or an unincorporated association authorized to sue under federal law or under the laws of the District of Columbia. *See* Rule 17(b), Fed.R.Civ.P.

The Federal Maritime Lien Act provides that only "a person" may establish a maritime lien or bring a civil action to enforce it. *See* 46 U.S.C. § 31342(a). James Creek Marina has failed to demonstrate that it is a "person," whether a natural person or a legal entity such as a corporation or partnership, that is entitled to establish or enforce a maritime lien. Furthermore, Rule 17(b) of the Federal Rules of Civil Procedure makes no provision for suits to be brought solely in a business name. Physical locations also lack the capacity to sue. *See Coeur D'Alene Lake v. Kiebert*, 790 F.Supp. 998, 1006 (D.Idaho 1992) (dismissing object of nature as a plaintiff for lack of capacity). James Creek Marina therefore is not the real party in interest and does not have the capacity to sue under Rule 17, Fed.R.Civ.P. The real parties in interest that may

have the capacity to sue in this case may be one or more of the following: Marine Management, Inc., a Washington, D.C. corporation; Washington D.C. Associates, a California general partnership; and Westrec Properties, Inc., a corporation.

Because plaintiff is not a legal entity and lacks the capacity to sue, defendant has asked the Court to dismiss this case and release defendant's vessel. Such an uncompromising result is not authorized by Rule 17(a) of the Federal Rules, however, which expressly provides: "No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest. . . ." Rule 17(a), Fed.R.Civ.P. *See also Link Aviation, Inc. v. Downs*, 325 F.2d 613, 614 (D.C.Cir.1963). The Court therefore will give plaintiff 20 days to amend its complaint by joining or substituting the entity or entities that ultimately are the real parties in interest in this case with the capacity to sue.

With respect to the propriety of the arrest of defendant's boat, plaintiff has demonstrated to the satisfaction of the Court that the arrest of the vessel was indeed proper and should not be vacated. The Federal Maritime Lien Act, 46 U.S.C. § 31342(a), provides that "a person providing necessaries to a vessel on the order of the owner or a person authorized by the owner–(1) has a maritime lien on the vessel; [and] (2) may bring a civil action in rem to enforce the lien. . ." A maritime lien can be enforced through an in rem action and by a court's issuance of an arrest warrant. *See* Rules C(1), C(3), Supp. R. Adm. Exhibit C. to plaintiff's verified complaint is a statement for monthly slip fees and other charges, and the defendant does not dispute the fact that he indeed owes payment for certain "necessaries" provided for his boat under the Annual Boat Storage License Agreement described above. The Court

therefore finds that the arrest of the boat in this case was proper and should not be vacated.

Despite a proper arrest of the vessel, defendant seeks release of his boat and offers to post security pursuant to Rule E(5)(a), Supp. R. Adm., which provides:

> [W]henever . . . process in rein is issued the execution of such process shall be stayed, or the property released on the giving of security, to be approved by the court or clerk, or by stipulation of the parties conditioned to answer the judgment of the court or any appellate court. . . In the event of the inability or refusal of the parties so to stipulate the court shall fix the principal sum of the bond or stipulation at an amount sufficient to cover the amount of the plaintiff's claim fairly stated with accrued interest and costs; but the principal sum shall in no event exceed (i) twice the amount of plaintiff's claim or (ii) the value of the property on due appraisement, whichever is smaller. . .[1]

Defendant maintains that the amount of the security required should be limited to the amount actually owed for the "necessaries" that were provided to defendant's boat, i.e., the overdue dock fees and other fees related to the storage of his boat. Plaintiff argues that the term "necessaries" also includes the attorneys' fees that plaintiff incurs in enforcing its maritime lien. Plaintiff bases this argument on the fact that the Annual Boat Storage License Agreement signed by defendant provides that "[a]11 expenses, including attorneys' fees and costs, incurred by Licensor in connection with the enforcement of its

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[1] Plaintiff argues that Rule E(5)(b) applies, requiring a bond in "at least double the aggregate amount claimed by plaintiffs." The Court disagrees. Rule E(5)(a) is the relevant provision, and it requires a bond only sufficient to cover plaintiff's claim, "fairly stated," with accrued interest and costs, and totaling not more than twice the amount of the claim.

rights under this Agreement, including right to liens, maritime and otherwise, and fees and costs incurred in any lien action, shall be paid by Licensee. . . ."

Verified Complaint, Ex. B.

Contrary to plaintiff's argument, "necessaries" are only "repairs, supplies, towage, and use of a dry dock or marine railway." 46 U.S.C. § 31301(4). Necessaries do not include attorneys' fees. *Bradford Marine, Inc. v. M/V Sea Falcon*, 64 F.3d 585, 587 (11th Cir.1995). The amount of the bond that defendant must post to obtain the release of his boat therefore must be based only on the amount of plaintiff's claim, "fairly stated," for the overdue boat storage fees and other storage-related costs.

Apparently a slip rental fee of $198.00 (minus a $16.50 promotional credit) together with a dock box fee of $10.00 was charged to defendant on a monthly basis. Verified Complaint, Ex. C. Defendant has alleged failed to make payments since August 1995. Verified Complaint at ¶ 6. In October 1995, James Creek Marina began charging defendant the higher "transient rate" to store his boat. Verified Complaint, Ex. C. [2] It appears to the Court that in addition to charging the transient rate, James Creek Marina also continued to charge defendant the monthly rate of $198.00. *See id.* The Court will not calculate security based on what appears to be "double billing" on the part of James Creek Marina. The Court will set the amount of security based only upon the unpaid monthly fees and subsequent unpaid transient fees.

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[2] The License Agreement provides that if the licensee fails to pay storage fees within fifteen days after the due date, the rate charged will "become a day-to-day license at the Transient (Daily) Rate posted in the Marina's offices, with such changes to take effect automatically and without further notice to Licensee." Verified Complaint, Ex. B.

According to the Court's calculation, defendant's allegedly unpaid monthly and transient fees total twenty thousand five hundred forty-two dollars and sixty-seven cents ($20,542.67). The defendant is entitled to release of the vessel on the posting of security in that amount plus twelve percent for interest and court costs. *See* Rule E(5)(c), Supp. R. Adm. Defendant may post a 10 percent surety bond. Accordingly, it is hereby

ORDERED that plaintiff's Motion to Vacate Dismissal and Reschedule Status Conference is GRANTED nunc pro tunc as of May 19, 1997; it is FURTHER ORDERED that the case is reopened and restored to the docket; it is

FURTHER ORDERED that Defendant's Motion for Relief is GRANTED in part and DENIED in part; it is

FURTHER ORDERED that Plaintiff has until June 20, 1997 to amend its complaint and name the proper party or parties in interest having the capacity to sue; and it is

FURTHER ORDERED that bond is set at twenty thousand five hundred forty-two dollars and sixty-seven cents ($20,542.67) plus twelve percent for interest and court costs. Defendant may post a 10 percent surety bond. Upon proof that such a bond has been posted, the vessel My Girls will be released.

This Court strongly recommends that the parties to this suit and any other interested parties continue settlement discussions and attempt to resolve this dispute without further court involvement. Magistrate Judge Kay will make himself available, upon request, to facilitate such discussions.

SO ORDERED.

/s/ Paul L. Friedman
Judge, United States District Court
for the District of Columbia

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CIVIL ACTION NO: 97-0423 (PELF)

JAMES CREEK MARINA
Plaintiff

v.

VESSEL MY GIRLS,
(a.k.a. MY GIRL II and JENNY LYNN)

IN REM

and

JOHN SINGLETON, *IN PERSONAM*
Defendants,

July 7, 1997

MEMORANDUM OPINION AND ORDER

On May 29, 1997, this Court issued a Memorandum Opinion and Order in this case permitting plaintiff to amend its complaint to include the real party in interest with the capacity to sue and permitting defendant John Singleton to secure the release of his vessel upon the posting of a bond. Plaintiff was given until June 20, 1997 to amend the complaint.[1]

Based on plaintiff's representations as to the unpaid balance on a slip rental, the bond was set at twenty thousand five hundred forty-two dollars and sixty-seven cents

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[1] An amended complaint has now been filed, and defendants have moved to dismiss it. Plaintiff's opposition is not yet due.

($20,542.67) plus 12 percent for interest and court costs. The Court calculated the unpaid balance to include monthly rates of one hundred ninety-eight dollars ($198.00) for the months from the start of the contract until October 1995, transient rates of twenty-five dollars and fifty cents ($25.50) per day since October 1995, and other miscellaneous charges and deductions.

Defendants now move for reconsideration of the Court's Order, requesting that the bond be lowered to no more than six thousand dollars ($6,000.00). Defendants submit invoices provided to them for the slip rental. Defendants' invoices indicate that the amount due as of February 26, 1997, was five thousand nine hundred thirty-six dollars and seventeen cents ($5,936.17). Def.s' Motion for Reconsideration, Ex. A. On none of the invoices submitted are transient fees assessed. Defendants therefore argue that plaintiff did not elect to charge transient fees as permitted, although not required, by the Annual Boat Storage License Agreement.[2] Defendants further allege that plaintiff's levy of the transient rate in the context of this litigation was a wrongful backdating of charges intended to harass defendants and mislead the Court.

In its response to defendants' motion and its own motion for reconsideration, plaintiff states that the actual amount of money owed is thirty thousand two hundred eighteen dollars and sixty-one cents ($30,218.61) and requests that bond be set at sixty thousand dollars ($60,000). To arrive at this figure, plaintiff asserts that defendants failed to make the first rental payment; thus, it maintains, defendants owe transient fees from the start of the Agreement. Plaintiff's figure also includes attorneys' fees, despite the Court's prior ruling that attorneys'

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[2] The Agreement reads: "If Licensee fails to pay an installment of license fees due hereunder within 15 days after it is due, the license granted hereby shall, *at the Licensor's option*, become a day-to-day license at the Transient (Daily) Rate . . . . ." Verified Complaint, Ex. B (emphasis added).

fees would not be included as a basis for any security set by the Court. *See* May 29, 1997 Memorandum Opinion at 6.[3] Plaintiff also asks the Court to consider that defendants were never charged for electricity during the time that the vessel was docked at James Creek Marina and to add that figure to plaintiff's claim. Plaintiff has never submitted any documentation to this Court, however, that would establish or even approximate the charges for electricity.

Plaintiff's original Verified Complaint includes an exhibit identified as a statement of money owed by defendant John Singleton as of February 28, 1997. The total on this statement is twenty-two thousand sixty-five dollars and sixty-seven cents ($22,065.67). It is quite clear from the statement that defendants submitted with their motion, however, that defendants were only billed slip fees and not transient fees. Exhibit A to defendants' motion is a statement, provided to defendants by plaintiff, that indicates that the balance owed as of February 26, 1997 (including slip fees for March 1997) was five thousand nine hundred thirty-six dollars and seventeen cents ($5,936.17), *not* twenty-two thousand sixty-five dollars and sixty-seven cents ($22,065.67). The Court was misled by the document attached to plaintiff's Verified Complaint into believing that transient fees actually were levied and billed to defendants on the dates listed in plaintiff's exhibit. In addition, this was suggested, if not argued, in papers filed with the Court

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[3] Although plaintiff asserts a claim to attorneys' fees as "necessaries" under the contract, this Court is unwilling to expand the statutory language which clearly does not include attorneys' fees as "necessaries." 46 U.S.C. § 31301(4); *see also Bradford Marine, Inc. v. M/V Sea Falcon*, 64 F.3d 585, 587 (11th Cir. 1995). Plaintiff's protestations to the contrary, attorneys' fees accumulated in the enforcement of a maritime lien are not services to a vessel. Attorneys' fees and other legal fees have been included as necessaries in preferred ship mortgage cases, but such cases are governed by different law.

and during oral argument, and therefore was relied upon by the Court in calculating the amount of security in the Court's May 29, 1997 Opinion. Unlike defendants, plaintiff has never provided the Court with individual monthly receipts or the February 26, 1997 statement it sent to defendants.

Plaintiff now admits that transient fees were never charged before the start of this litigation: "Defendant is absolutely correct in his assertion that Plaintiff did not resort to charging Defendant any transient rate prior to instituting this litigation, although it clearly could have." Pl.'s Opp'n to Def.s' Motion at 4. The Court was misled by the statement plaintiff provided with its Verified Complaint and the arguments presented to it. In light of the invoices provided by defendants and the arguments made by plaintiff, which seem to indicate that plaintiff did indeed backdate the transient fees, or attempt to do so for the purposes of this litigation, this Court calculates defendants' unpaid slip fees to total six thousand seven hundred and twenty-eight dollars and seventeen cents ($6,728.17).[4] Defendants are entitled to release of the vessel on the posting of security in that amount plus twelve percent for interest and court costs. *See* Rule 5(E)(c), Supp. R. to Fed. R. Civ. P. for Certain Admiralty and Maritime Claims. Defendants may post a surety bond. For the foregoing reasons, it is hereby

ORDERED that defendants' Motion for Reconsideration is GRANTED in part and DENIED in part; it is

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[4] This figure is calculated based on the statement dated February 26, 1997, provided by defendant, that indicates that the outstanding balance, up to and including March 1997, was five thousand nine hundred thirty-six dollars and seventeen cents ($5,936.17) and on monthly slip fees of one hundred ninety-eight dollars ($198.00) since April 1, 1997 (totaling seven hundred ninety-two dollar ($792.00)). This Court declines to speculate as to the value of the electricity that plaintiff allegedly provided to the vessel.

FURTHER ORDERED that plaintiff's Motion for Reconsideration is DENIED; it is

FURTHER ORDERED that bond is set at six thousand seven hundred twenty-eight dollars and seventeen cents ($6,728.17) plus twelve percent for interest and court costs. Defendants may post a surety bond. Upon proof that such a bond has been posted, the vessel My Girls will be released; and it is

FURTHER ORDERED that plaintiffs' counsel shall show cause in writing under oath within fifteen (15) days from the date of this Order as to why sanctions should not be levied against plaintiff and its counsel for having misled the Court.

SO ORDERED.

/s/ Paul L. Friedman
PAUL L. FRIEDMAN
United States District Judge

Date: 7/7/91

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CIVIL ACTION NO: 97-0423 (PLF)

JAMES CREEK MARINA
Plaintiff,

v.

VESSEL MY GIRLS,
(a.k.a. MY GIRL II and JENNY LYNN)

IN REM

and

JOHN SINGLETON, IN PERSONAM
Defendants.

July 10. 1997

ORDER

Having deposited seven thousand five hundred thirty-five dollars and fifty-five cents ($7, 535.55) into the Registry of the Court, and this amount representing six thousand seven hundred twenty-eight dollars and seventeen cents ($6,728.17) plus twelve percent for interest and court costs, defendant has posted the amount of security ordered by the Court in its Order of July 7, 1997. Accordingly, it is hereby

ORDERED that the vessel My Girls be RELEASED.

SO ORDERED.

/s/ Norma Holloway Johnson
for Paul L. Friedman
United States District Judge

DATE: *July 10, 1997*

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CIVIL ACTION NO: 97-0423 (PLF)

MARINA MANAGEMENT SERV., INC
JAMES CREEK MARINA
Plaintiff,

v.

VESSEL MY GIRLS,
(a.k.a. MY GIRL II and JENNY LYNN)
Official No: 659523
Her Engines, etc.,

IN REM

and

JOHN SINGLETON, IN PERSONAM
Defendants.

July 25. 1997

ORDER DISMISSING
SECOND MOTION TO DISMISS

Having considered the Defendant's Second Motion To Dismiss, the opposition thereto and the reply it is this *25th*, day of *July*, 1997 hereby ORDERED THAT:

(1) The Second Motion To Dismiss is hereby DENIED; and

(2) That the Plaintiff not be awarded costs associated with having to defend at this time said Motion. It is time to settle this case or move to a resolution on the merits.

/s/ Paul L. Friedman
Judge, United States District Court
for the District of Columbia

July 25, 1997

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CIVIL ACTION NO: 97-0423 (PLF)

MARINA MANAGEMENT SERVICES., INC
As Agent for MIF REALTY, LP (d/b/a)
JAMES CREEK MARINA
Plaintiff

v.

VESSEL MY GIRLS,
(a.k.a. MY GIRL II and JENNY LYNN) *IN REM*
Defendant,

and

JOHN SINGLETON, IN PERSONAM
Defendant, Claimant.

JOHN SINGLETON,
Counter-plaintiff

v.

MARINA MANAGEMENT SERVICES., INC
As Agent for MIF REALTY, LP (d/b/a)
JAMES CREEK MARINA
Counter-Defendant

February 9, 1998

ORDER

On July 7, 1997, the Court directed plaintiff counsel to show cause in writing under oath why sanctions should not be levied against plaintiff and its counsel for having misled the

Court. The filings of counsel for both parties in connection with that order contain scurrilous personal attacks, name-calling and petty arguments which demean the legal profession. The lack of civility and *ad hominem* attacks by counsel on both sides of this case is breathtaking. In addition, defendants' counterclaims, which threaten to delay the immediate resolution of a case involving admittedly unpaid boat dock fees, appear to be mostly frivolous and designed primarily to harass. See Rule 11, Fed. R. Civ.P.

The Court is troubled by the way in which counsel have decided to conduct themselves and, in particular, the way in which they have entrenched themselves in a mire of seemingly petty arguments that waste the Court's time and resources. The Court therefore highly encourages counsel to consider the option of resolving their rancorous differences instead of using the Court's time to decide the outstanding issues in this case – a decision that would require a hearing at which counsel for both sides would be represented by separate counsel, as the Court would put both lawyers under oath to develop the true facts concerning who said what to whom, the accuracy and legitimacy of the documents submitted in this case and the accuracy of oral and written representations made to the Court, a spectacle that might well result in the court levying sanctions personally against counsel as well against their clients.

In order to avoid spending even more time on the issues about which counsel have chosen to bicker, it is hereby.

ORDERED that unless the parties can resolve all outstanding matters in this case by withdrawing all request for sanctions, withdrawing the offending pleadings, presenting a joint request that the Court discharge its Order to show cause, and withdrawing defendants' counterclaims by March 13, 1998, the Court will appoint a special master, with the parties to pay the costs of such appointment. The special master will attempt

to bring this case to resolution and, if necessary, take testimony, find facts and prepare a report recommending appropriate sanctions to be levied and whether either counsel should be referred to this Court's Grievance Committee.

SO ORDERED.

/s/ Paul L. Friedman
PAUL L. FRIEDMAN
United States District Judge

DATE: 2/9/98

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CIVIL ACTION NO: 97-0423 (PLF)

MARINA MANAGEMENT SERVICES., INC
As Agent for MIF REALTY, LP (d/b/a)
JAMES CREEK MARINA
Plaintiff

v.

VESSEL MY GIRLS,
(a.k.a. MY GIRL II and JENNY LYNN) *IN REM*

Defendant,

and

JOHN SINGLETON, IN PERSONAM
Defendant, Claimant.

JOHN SINGLETON,
Counter-plaintiff

v.

MARINA MANAGEMENT SERVICES., INC
As Agent for MIF REALTY, LP (d/b/a)
JAMES CREEK MARINA
Counter-Defendant

February 9, 1998

MEMORANDUM OPINION AND ORDER

Pending before the Court are plaintiff's motion for summary judgment, defendants' response and plaintiff's reply. After considering the papers regarding this particular aspect of the

case and the other copious and vexatious filings counsel have submitted throughout the life of this action, the Court is prepared to grant plaintiff's motion for summary judgment, but seeks additional information from the parties before entering judgment.

This case started with the seizure of defendant John Singleton's boat, "My Girls," because, as Mr. Singleton admits, he did not pay fees to dock his boat for a year and several months. *James Creek Marina v. Vessel My Girls*, 964 F. Supp. 20, 21-23 (D.D.C 1997).[1] Plaintiff seeks billed dockage or slip fees, transient fees (a higher, day-to-day penalty rate), U.S. Marshal's and related fees (for the arrest, seizure and care of the boat while under arrest), pre-judgment and post-judgment interest and attorneys' fees and other costs related to pursuing this litigation.

The Court has already ruled that even though plaintiff had a contractual option to charge Mr. Singleton higher transient fees, it failed to exercise that option. Mr. Singleton was never actually billed transient fees but only slip fees; indeed, the first time the issue of transient fees arose was within the initiation of this litigation. *See* Memorandum Opinion and Order of July 7, 1997 at 2-4. Plaintiff cannot retroactively bill Mr. Singleton and therefore is not entitled to transient fees.

With respect to the dockage or slip fees, however, there is no genuine dispute that Mr. Singleton owes those fees as well as the U.S. Marshal's and related fees respecting the seizure of the vessel. *See James Creek Marina v. Vessel My Girls*, 964 F. Supp at 23; Testimony of John Singleton at Hearing on May

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[1] The seizure, or arrest, of Mr. Singleton's boat was executed pursuant to the Federal Maritime Lien Act, 46 U.S.C.§ 31e42(a) and Rules (C)(1), C(3), Supp. R. Adm. & Maritime Claims. This Court has already held that the arrest of Mr. Singleton's boat was proper. *James Creek Marina v. Vessel My Girls*, 964 F. Supp. at 22-23.

22, 1997; Plaintiff's Reply to Defendant's Opposition to Plaintiff's Motion for Summary Judgment at 6-8. Nor can there be any dispute that plaintiff is entitled to both pre-judgment and post-judgment interest with respect to these damages at the rate set by 28 U.S.C. § 1961. *See Reeled Tubing, Inc. v. M/V Chad G.*, 794 F.2d 1026 (5th Cir. 1986). Accordingly, the Court is prepared to enter judgment for plaintiff with respect to these amounts.

With respect to attorneys' fees, the Court has ruled that attorneys' fees are not "necessaries" under the Federal Maritime Lien Act, 46 U.S.C. § 31301(4). *James Creek Marina v. Vessel My Girls*, 964 F. Supp. at 23; Memorandum Opinion and Order of July 7, 1997 at 3 n.3; *see Bradford Marine, Inc. v. M/V C Falcon*, 64 F.3d 585, 587 (11th Cir. 1995). Plaintiff does not seek fees under the statute, however, but under the express language of the Annual Boat Storage License Agreement signed by defendant John Singleton. This agreement provides that the licensee must pay attorneys' fees and costs incurred by the licensor in connection with the enforcement of its rights under the agreement.[2] While the Court will not award damages for attorneys' fees to plaintiff's counsel that includes time spent in responding to this Court's Order to show cause why sanctions should not be levied against plaintiff and its counsel, the Court is prepared to enter judgment for plaintiff that will include attorneys' fees and costs incurred by plaintiff in connection with the enforcement of its rights under the Boat Storage License Agreement. *See Ideal Electronic Security Co. v. International Fidelity Ins. Co.*, 129 F.3d 143, 148 (D.C. Cir. 1997).

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[2] The Court may potentially find an additional basis for awarding attorneys' fees in this case pursuant to the general rule that "the award of fees and expenses in admiralty actions is discretionary with the district judge upon a finding of bad faith." *Ingersoll Milling Machine v. M/V Bodena*, 829 F.2d 293, 309-10 (2d Cir. 1987).

For the foregoing reasons, it is hereby

ORDERED that defendants may file a memorandum not to exceed ten pages in length on or before February 23, 1998, providing legal argument and authority as to why plaintiff is not entitled to attorneys' fees and costs (1) under the Boat Storage License Agreement, or (2) under general rules of admiralty law, and/or (3) because certain of the fees and costs sought are not reasonable; it is

FURTHER ORDERED that plaintiff may respond with a ten-page memorandum by March 6, 1998; and it is

FURTHER ORDERED that plaintiff shall submit by March 6, 1998 two alternative proposed forms of judgment that will effectuate the rulings of the Court set forth in this Opinion, one to reflect the inclusion of attorneys' fees and one to exclude attorneys' fees.[3] In the alterative orders, plaintiff shall state specifically the rate of interest used in calculating pre-judgment and post-judgment interest amounts. The pre-judgment interest shall be in accordance with the relevant provisions of 28 U.S.C. § 1961.

SO ORDERED.

/s/ Paul L. Friedman
PAUL L. FRIEDMAN
United States District Judge

Date: 2/9/98

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[3] The Court does not believe that the Fifth Circuit's opinion in *Reeled Tubing, Inc. v M/V Chad G*, 794 F.2d 1026 (5th Cir. 1986), supports the award of pre-judgment interest for any portion of the damages awarded with respect to attorneys' fees.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CIVIL ACTION NO: 97-0423 (PLF)

MARINA MANAGEMENT SERVICES., INC
As Agent for MIF REALTY, LP (d/b/a)
JAMES CREEK MARINA
Plaintiff

v.

VESSEL MY GIRLS,
(a.k.a. MY GIRL II and JENNY LYNN) ***IN REM***
Defendant,

and

JOHN SINGLETON, IN PERSONAM
Defendant, Claimant.

JOHN SINGLETON,
Counter-plaintiff

v.

MARINA MANAGEMENT SERVICES., INC
As Agent for MIF REALTY, LP (d/b/a)
JAMES CREEK MARINA
Counter-Defendant

January 5, 1999

MEMORANDUM OPINION

This matter is before the Court on plaintiff's unopposed request for ruling respecting its entitlement to attorneys' fees. In addition, the Court has yet to enter final judgment for

plaintiff, as it previously indicated it would, on plaintiff's motion for summary judgment. It must also consider whether counsel for either party should be sanctioned for his or her personal attacks, name-calling and petty arguments as well as (in the case of plaintiff's counsel) misleading statements, documents and arguments and (in the case of defendants' counsel) the frivolous filing of counterclaims.

Upon consideration of plaintiff's motion for summary judgment, the Court found in its Memorandum Opinion of February 9, 1998 that there was no factual dispute that defendant John Singleton owed plaintiff dockage or slip fees — but *not* transient fees — as well as the U.S. Marshal's and related fees respecting the seizure of the vessel, and both pre-judgment and post-judgment interest at the rate set by 28 U.S.C. § 1961. *See* Memorandum Opinion and Order of February 9, 1998 at 2-3. It indicated that it was prepared to enter judgment for plaintiff that would also include attorneys' fees and the costs incurred by plaintiff in connection with the enforcement of its rights under the Boat Storage License Agreement. *Id.* at 3. It requested additional filings from the parties respecting plaintiff's right to attorneys' fees and the amount of any such fees. Counsel provided supplemental filings, as requested.

Upon consideration of all the papers filed by the parties with respect to plaintiff"s motion for summary judgment and the Court's request for information regarding attorneys' fees, the Court concludes that it will enter judgment for plaintiff in the amount of $7, 663.21, which represents the Court's calculation of the slip fees pursuant to its July 7, 1997 and February 9, 1998 Memorandum Opinions and Orders ($6,728.17), plus the U.S. Marshal's fees ($390.00), plaintiff's filing fee ($150.00) and prejudgment interest at the rate of 5.391% per annum ($395.04). The Court will also award plaintiff's counsel $10,000.00 in attorneys' fees, which represents approximately

one-third the amount of attorneys' fees the Court concludes plaintiff is reasonably entitled to for the work performed.

The Boat Storage License Agreement signed by defendant expressly provides;

> All expenses, including attorneys' fees and costs, incurred by Licensor in connection with the enforcement of its rights under this Agreement, including right to liens, maritime and otherwise, and fees and costs incurred in any lien action, shall be paid by Licensee. . . .

Verified Complaint, Ex. B. This provision, like any other contract provision, is enforceable, but, under established principles, plaintiff is only entitled to attorneys' fees reflecting the extent of its success on the merits. *See Fleming v. Carroll Publishing Co.*, 581 A.2d 1219, 1228 (D.C. 1990). Plaintiff has *not* been wholly successful in its pursuit of this litigation. Plaintiff repeatedly has failed to convince this Court that is should be awarded certain "transient fees" that it never actually billed defendant. In addition, too much of the Court's time and resources have been spent not on the merits of plaintiff's claims, but on a collateral issue created when plaintiff's counsel filed a misleading exhibit and made certain misleading arguments to the Court. Plaintiff has, however, succeeded on the central claim in its case – that it is entitled to slip fees under the Boat Storage License Agreement.[1]

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[1] Defendant John Singleton continues to argue that plaintiff Marina Management has not established by legally competent evidence that it is an entity entitled to sue for the slip fees, that is, that it is not the real party in interest with capacity to sue. The Court has already dealt with this argument and has found defendants' arguments with respect to plaintiff's capacity to sue wanting. *See* Memorandum Order of July 25, 1997 and Memorandum Opinion and Order of May 29, 1997 at 4. It will not revisit the issue again.

Plaintiff has requested $35,461.75 in attorneys' fees. This request already takes into account the Court's decision that it will not award plaintiff any fees that relate to the Court's July 7, 1997 Order to show cause why sanctions should not be levied against plaintiff and its counsel for having misled the Court. The Court finds it appropriate, however, to reduce this fee amount even further to exclude the time plaintiff's counsel spent preparing its August 7, 1997 motion for reconsideration — a wholly unnecessary motion reiterating arguments regarding transient fees that the Court had already considered and rejected — and the amounts billed with respect to the Court's February 9, 1998 Order regarding the uncivil and possibly sanctionable conduct of counsel for both sides and the possible need for appointment of a special master.[2] The total deductions from plaintiff's request for attorneys' fees therefore is $4,617.14. The resulting figure is $30,844.61.

The Court has decided to cut this figure further, to approximately one-third of the apparently reasonable amount request, or $10,000, finding the payment of approximately $20,000 an appropriate sanction for the conduct of plaintiff's counsel in misleading the Court (1) by filing an exhibit

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[2] The deductions are as follows:

-$ 425.00	(Bill dated 07/21/97)
- 678.13	(Bill dated 08/04/97)
-1,356.25	(Bill dated 08/05/97)
- 678.13	(Bill dated 08/06/97)
-$3,137.51 —	Total Deduction for Plaintiff's Motion for Reconsideration
-$ 451.50	(Bill dated 02/16/98)
- 196.88	(Bill dated 02/19/98)
- 481.25	(Bill dated 04/06/98)
- 350.00	(Bill dated 04/11/98)
-$1,479.63 —	Total Deduction for Work Regarding Sanctionable Conduct

intended to persuade the Court that transient fees were actually levied and billed to defendants on the dates listed in plaintiff's exhibit, when in fact she knew they were not, and (2) in relying on this misleading exhibit in papers filed with the Court and during oral argument. Memorandum Opinion and Order of July 7, 1997, at 3-4. *See In re TCL Ltd.*, 769 F.2d 441, 445 (7th Cir. 1985) ("Even those who prevail may be liable for fees if in bad faith they cause their adversaries to bear excessive costs")' *Dehner v. Kansas City Southern Industries*, 713 F. Supp. 1397, 1403 (D. Kan. 1989) ("[I]nstead of finding a Rule 11 violation, this court will refuse to assess attorney's fees in favor of plaintiffs as a part of their damages"); *cf. MacArthur Area Citizenas Ass'n v. Republic of Peru*, 809 F.2d 918, 923-24 (D.C. Cir. 1987) *order modified by* 823 F.2d 606 (D.C. Cir. 1987) (court has inherent power to impose sanctions for cost of an improperly filed appellate brief). Counsel should consider herself fortunate that a more severe sanction is not being imposed for this conduct.[3]

Both counsel have engaged in name-calling, personal attacks and petty arguments and have burdened the Court with repetitions of arguments already rejected. Defense counsel has filed counterclaims that appear frivolous and designed primarily to harass and delay a final resolution of this case. For the reasons discussed in its Order of February 9, 1998, these

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[3] It is a violation of the District of Columbia Rules of Professional Conduct for a lawyer to knowingly make a false statement of material fact or to offer evidence that the lawyer knows to be false. DISTRICT OF COLUMBIA RULES OF PROFESSIONAL CONDUCT Rule 3.3. (amended 1996). Violations of these Rules are grounds for discipline in this Court. *See* RULES OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA, Rule 706(a) (1994).

counterclaims therefore will be dismissed. *See* Rule 11(b)(1), Fed. R. Civ. P.[4]

Orders consistent with this Memorandum Opinion will be entered this same date .

SO ORDERED.

/s/ Paul L. Friedman
PAUL L. FRIEDMAN
United States District Judge

FILED January 6, 1999

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[4] Defendant has announced its consent to dismissal of the fourth of the five counterclaims (for wrongful seizure of the vessel). *See* Defendant's Memorandum of Points and Authorities Pursuant to the Court's Memorandum Opinion and Order of February 9, 1998 at 10 n.4. The second counterclaim (defamation) and the fifth counterclaim (abuse of process) are deficient because of their integral relationship to the legitimate pursuit by plaintiff of this lawsuit. Finally, when viewed in the context of the petty and niggling conduct of counsel for both parties, all of the counterclaims should be seen as designed primarily to harass. All five counterclaims therefore are properly dismissed under Rule 11 of the Federal Rules of Civil Procedure.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CIVIL ACTION NO: 97-0423 (PLF)

MARINA MANAGEMENT SERVICES., INC
As Agent for MIF REALTY, LP (d/b/a)
JAMES CREEK MARINA
Plaintiff

v.

VESSEL MY GIRLS,
(a.k.a. MY GIRL II and JENNY LYNN) *IN REM*
Defendant,

and

JOHN SINGLETON, IN PERSONAM
Defendant, Claimant.

JOHN SINGLETON,
Counter-plaintiff

v.

MARINA MANAGEMENT SERVICES., INC
As Agent for MIF REALTY, LP (d/b/a)
JAMES CREEK MARINA
Counter-Defendant

January 5, 1999

ORDER AND JUDGMENT

For the reasons stated in the Memorandum Opinion issued this same day and in this Court's Memorandum Opinion of February 9, 1998, it is hereby

ORDERED that plaintiff's motion for summary judgment is GRANTED; it is

FURTHER ORDERED that JUDGMENT is entered for plaintiff in the amount of $7,663.21, plus post-judgment interest at the rate of 5.391% per annum from the date of this Order; it is

FURTHER ORDERED that plaintiff is awarded $10,000 in attorneys' fees; defendant shall pay this amount within thirty (30) days from the date of this Order and post-judgment interest on this amount at the rate of 5.391 % per annum; and it is

FURTHER ORDERED that the judgment for plaintiff shall attach immediately to the security bond now posted with this Court, with said funds to be disbursed promptly to plaintiff by the Clerk of the Court.

SO ORDERED.

/s/ Paul L. Friedman
PAUL L. FRIEDMAN
United States District Judge

FILED January 6, 1999

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CIVIL ACTION NO: 97-0423 (PLF)

MARINA MANAGEMENT SERVICES., INC
As Agent for MIF REALTY, LP (d/b/a)
JAMES CREEK MARINA
Plaintiff

v.

VESSEL MY GIRLS,
(a.k.a. MY GIRL II and JENNY LYNN) *IN REM*

Defendant,

and

JOHN SINGLETON, IN PERSONAM
Defendant, Claimant.

JOHN SINGLETON,
Counter-plaintiff

v.

MARINA MANAGEMENT SERVICES., INC
As Agent for MIF REALTY, LP (d/b/a)
JAMES CREEK MARINA
Counter-Defendant

January 5, 1999

ORDER

For the reasons in the Memorandum Opinion issued this same day and in this Court's Order of February 9, 1988, it is hereby

ORDERED *sua sponte* that defendants' counterclaims are DISMISSED as frivolous and designed to harass and delay. *See* Rule 11, Fed. R. Civ. P. This is an appealable final Order. *See* Rule 54, Fed. R. Civ. P.;*cf, United States v. Haynes*, 158 F.3d 1327 (D.C.Cir. 1998).

SO ORDERED.

/s/ Paul L. Friedman
PAUL L. FRIEDMAN
United States District Judge

FILED January 6, 1999

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT
September Term, 1999
97cv00423

No. 99-7017

Marina Management Services, Inc. d/b/a
James Creek Marina, as Agent for MIF Realty, LP
and Lisa Petti Ellis,

Appellants

v.

Vessel My Girls, a/k/a/ My Girl II,
Official Number: 659523, Her Engines, Masts,
Anchors, Cables Chains, Rigging, Tackle, apparel,
Furniture, and all the Necessaries Therewith Appertaining
and a/k/a Jenny Lynn, John Singleton,

Appellees.

Consolidated with 99-7018

FILED: March 29, 2000

BEFORE: EDWARDS, *Chief Judge*, ROGERS and TATEL, *Circuit Judges*.

ORDER

Upon consideration of appellees' petition for rehearing filed March 13, 2000, it is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:

Mark J. Langer, Clerk

BY: /s/ Robert A. Bonner
Robert A. Bonner
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JAMES CREEK MARINA
200 V Street SW
Washington, D.C. 20024

Plaintiff

v.

VESSEL MY GIRLS (a.k.a. JENNY LYNN)
Official Number: 659523,
Her Engines, Masts, Anchors, Cables, Chains,
Rigging, Tackle, Apparel, Furniture, and
All The Necessaries Therewith Appertaining

IN REM,

and

JOHN SINGLETON
13208 Music Master Drive
Silver Spring, MD 20904

IN PERSONAM

Defendants

* * * * * * * * * * * * * * * * * * *

VERIFIED COMPLAINT TO FORECLOSE
MARITIME LIEN FOR NECESSARIES

James Creek Marina (hereafter "James Creek"), Plaintiff, by its undersigned attorneys, sues the Vessel MY GIRL, (a.k.a. JENNY LYNN), Official Number 659523 (hereafter "MY GIRL"), her engines, masts, anchors, cables, chains, rigging, tackle, apparel, furniture, and all the necessaries therewith appertaining, *in rem*, and John Singleton ("Singleton"), *in*

personam, and as grounds for its Verified Complaint states as follows:

JURISDICTION

1. This is a case of admiralty jurisdiction as hereinafter more fully appears and is an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure. This Court has jurisdiction over this action pursuant to 46 U.S.C. §31342, 28 U.S.C. §1331 and 28 U.S.C. §1333.

PARTIES

2. Plaintiff, James Creek, is a marina and vessel docking facility with its principal place of business in Washington, D.C. James Creek is, among other things, engaged in the business of supplying dockage and other necessaries to vessels.

3. Defendant, Vessel MY GIRL, Official Number 659523, is a 1983 34 foot Silverton Convertible. According to the records of the United Sates Coast Guard, at all times pertinent hereto, the Vessel MY GIRL was owned by John Singleton, defendant. See U.S. Coast Guard Abstract of Title issued 2/19/97 and attached hereto as **EXHIBIT A**. She is presently located at James Creek Marina, 600 Water Street, SW, Washington, D.C. 20024 and is now within the jurisdiction of this Court.

4. Defendant, John Singleton, is an individual and resident of the state of Maryland.

FACTS

5. On or about February 3, 1994, Singleton executed a License Agreement ("Agreement") with James Creek, under which James Creek agreed to lease storage/docking space to Singleton for the vessel MY GIRL for the monthly amount of

$198.50 minus a $16.50 promotional credit. A copy of the Rental Agreement is attached hereto as **EXHIBIT B**. The term of the Agreement was extending by the parties in writing until June 7, 1996.

6. Singleton failed to make timely payments as required by the Rental Agreement. Specifically, Singleton failed to make monthly payments in the amount of $181.50 per month from August 22, 1995 to date, despite due demand.

7. Singleton's last payment was made on August 22, 1995. A default has, therefore, occurred under the Agreement and continues to occur.

8. At all times since February 3, 1994, up to and including the present, James Creek provided and continues to provide necessary dockage and electrical services essential for the well being of the vessel MY GIRL, in full compliance with the Agreement.

9. By virtue of 46 U.S.C. §31342(a) and under the terms of the Agreement with Singleton, James Creek has a valid maritime lien against the Vessel MY GIRL, her engines, masts, etc., in rem., and an *in personam* contractual claim against Singleton for the unpaid costs of the necessary services provided which total $26,015.67, as of February 28, 1997, plus $25.50 per day for each day thereafter, plus fees for electricity and services which continue to be provided to the vessel, plus attorneys fees, court costs and costs of these proceedings including custodia legis expenses. (See ***EXHIBIT B*** at ¶§14, 16, 19, and 20) An itemized invoice of James Creek Marina is attached hereto and incorporated by reference herein as ***EXHIBIT C***. All amounts prayed for in this Complaint are specifically provided for by the Agreement, including transient rates, costs and attorneys fees, and are deemed part of James Creek's maritime lien against the vessel.

COUNT I
ACTION *IN REM*
AGAINST VESSEL MY GIRL

10. James Creek incorporates herein by reference the allegations contained in paragraphs 1 through 9 of this verified Complaint.

11. By reason of Singleton's failure to pay for the necessary services he contracted for and received from James Creek for the benefit of the vessel MY GIRL, James Creek is entitled to immediate foreclosure of its maritime lien on the Vessel MY GIRL, Official Number 659523, and recovery of all sums due thereunder.

WHEREFORE, James Creek demands judgment against Singleton and the Vessel MY GIRL, Official Number 659523 as follows:

(A) That process *in rem* and a warrant of arrest be issued in due form of law in accordance with the practice of this Honorable Court in cases of admiralty and maritime jurisdiction against the Vessel MY GIRL, Official Number 659523, her engines, masts, anchors, cables, chains, rigging, tackle, apparel, furniture, and all the necessaries therewith appertaining, with notice to all persons claiming an interest therein to appear in answer to this verified Complaint;

(B) That the maritime lien for necessaries on the Vessel MY GIRL, Official Number 659523 be declared a valid and subsisting maritime lien upon the Vessel MY GIRL, Official Number 659523, her engines, masts, anchors, cables, chains, rigging, tackle, apparel, furniture, and all the necessaries therewith appertaining, prior and superior to the interests, liens, and claims of all persons or corporations whatsoever, except such persons or corporations as may hold preferred maritime liens on the Vessel MY GIRL, Official Number 659523;

(C) That this Honorable Court shall direct the manner in which the actual notice of the commencement of this suit shall be given by James Creek to the Custodian of the Vessel MY GIRL, Official Number 659523;

(D) That the Vessel MY GIRL, Official Number 659523, her engines, masts, anchors, cables, chains, rigging, tackle, apparel, furniture, and all the necessaries therewith appertaining, be condemned and sold by order of this Honorable Court and that James Creek be paid forthwith from the proceeds of such sale any and all amounts required to be paid by Singleton under the Agreement, including, without limitation, $26,015.67 as of February 28, 1997, plus $25.50 per day to the date of sale, plus costs of all services continuing to be provided to the vessel, plus custodia legis expenses, attorneys fees and costs of this proceeding;

(E) That judgment be entered in favor of James Creek against Singleton for any deficiency owed after the sale of the Vessel MY GIRL, Official Number 659523 and distribution of the proceeds thereof;

(F) That it be decreed that any and all persons or corporations claiming any interest in the Vessel MY GIRL, Official Number 659523 arising prior to the sale are thereafter barred and foreclosed of and from all right, equity of redemption, and claim of, in, or to the Vessel MY GIRL, Official Number 659523 and every part thereof, by reason of any such interest;

(G) That James Creek may have such other and further relief as the justice of its cause may require.

COUNT II
ACTION *IN PERSONAM*

12. James Creek incorporates herein by reference the allegations contained in paragraphs 1 through 11 of this Verified Complaint.

13. By reason of Singleton's ownership of the vessel and his authority to enter in to an Agreement with James Creek for the necessary services provided to the vessel MY GIRL by James Creek, and the fact that the vessel has received such services pursuant to that Agreement which were necessary to her safekeeping and condition but Singleton has failed to pay for such services, Singleton is indebted to James Creek in the amount of $26,015.67, plus $25.50 per day from February 28, 1997 to date of sale, plus costs for services continuing to be provided to the vessel for her safekeeping, condition and welfare, plus custodia legis fees, legal fees and costs of this proceeding;

WHEREFORE, James Creek demands judgment against John Singleton in the amount of $26,015.67, plus $25.50 per day from February 28, 1997 to date of sale, plus costs for services continuing to be provided to the vessel for her safekeeping, condition and welfare, plus custodia legis fees, legal fees and costs of this proceeding;, plus such other and further relief as the justice of its cause may require.

/s/ Lisa Petti Ellis
Lisa Petti Ellis, Esq. Federal Bar No.: 08307
Law Office of Lisa Petti Ellis
8370 Court Avenue, Suite 106
Ellicott City, Maryland 21043
(410) 461-8181
Attorney for James Creek, Plaintiff

ANNUAL BOAT STORAGE LICENCE AGREEMENT

Storage Space # ____ Wet Storage Space # *C-66*

Slip Size *36* Dock Box #____ Trailer Space #_____

(Wet storage does not include storage for trailers.)

This Agreement ("Agreement") is made this *4th* day of *March* 1994 by and between Washington D.C. Associates, a California general partnership ("Licensor") and *John A. Singleton* ("Licensee"). Licensor is the Concessioner and operator of James Creek Marina ("the Marina"). Licensee is the owner of and desires to procure storage space for, the vessel ("the Boat") described below:

Manufacturer *Silverton Conv*
Length *34* Beam *12*
Boat Name *My Girls*
Registration # *Doc 659523*
Year *83* Hull Color *White*
Trailer License #
Insurance Carrier/Agreement *Flagship Policy*
Address *410 (illegible) Avenue, Suite 227*
Annapolis, MD
Phone *1 800 262 8252*
Insurance Policy # *N 94 081-0016*
Licensor's Address: JAMES CREEK MARINA
200 V STREET SW
WASHINGTON DC 20024
Licensee's
Residence Address: *13208 Music Master Dr*

Residence Phone: *301 890-0747*
Business Name: *Aerotech, Corp*
Business Address *1221 11th St Wash, DC 20001*
Wash, DC 20001
Business Phone: *202-878-0877*

THE PARTIES AGREE AS FOLLOWS:

1. License Fees. Licensor licenses to Licensee, and Licensee Licenses from Licensor, the storage space(s) described above (the "Premises") for Storage of Licensee's Boat and other equipment. No bailment or deposit of goods for safekeeping is intended or created hereunder. Licensee shall pay to Licensor $*181.50* per month for a twelve-month period for boat storage fees; and $_____ as dock box fees. License fees are payable in advance on the first day of each month by automatic deduction on my *mastercard* credit card. Licensee shall pay to Licensor the cost of any utilities provided to the Premises upon Licensor delivery of any billing for such utility service. Licensee shall also pay when due all other fees and rental charges, where applicable.

2. Term of Agreement. The term of this Agreement shall commence on *1 April 94* and expire on *31 March 95*.

* * * * *

16. Breach of Agreement. If Licensee or Licensee's Agent breaches any provision of this Agreement or violates any rule, then, notwithstanding Sections 2 and 3, Licensor may terminate this Agreement immediately, remove the Boat from the Premises at Licensee's risk and expense and take possession of the Premises. Licensee agrees to pay the cost of any such action together with attorneys' fees.

* * * * *

19. Transient (Daily) Rate. If Licensee fails to pay an installment of license fees due hereunder within 15 days after it is due, the license granted hereby shall, at Licensor's option, become a day-to-day license at the Transient (Daily) Rate posted in the Marina's offices, with such changes to take effect automatically and without further notice to Licensee. Any

Unpaid charges to Licensee at the Transient (Daily) Rate shall be subject to collection as provided in this Agreement.

20. Lien for Nonpayment of License Fees and Other Charges. All unpaid charges for Licensee's license to use space for storage of the Boat and all other unpaid amounts due from Licensee hereunder shall give rise to a federal maritime lien and to all other rights and remedies available to Licensor, both in rem and personal, under both state and federal law. Further, if Licensor, at the express or implied written or oral request of the Licensee, furnishes any utilities or supplies, including fuel, maritime hardware, accessories or other goods or materials, or performs services of any sort, including making repairs relating directly or indirectly to the Boat or for the benefit of Licensee or others associated with Licensee, the charges therefor, until paid, shall give Licensor a maritime lien in the amount of the charges to the fullest extent permitted by law, and shall also entitle Licensor to all other remedies available under state or federal law. All expenses, including attorneys' fees and costs, incurred by Licensor in connection with the enforcement of is rights under this Agreement, including rights to liens, maritime and otherwise, and fees and costs incurred in any lien action, shall be paid by Licensee and may be included, at Licensor's option, in the amount of any lien, state of federal, which Licensor may have against Licensee or the Boat.

21. Concession Contract. If any terms or conditions of this Agreement are inconsistent with the terms or conditions of National Park Service Contract No. CC-NACE006-88 dated September 6, 1988, under which Licensor holds the concession to operate the Marina, or the Maintenance Agreement and Operating Plan for the operation of the Marina entered into under such contract (collectively, the "Concession Contract"), then the terms of the Concession Contract shall prevail and the inconsistent term or terms of this Agreement shall be void.

* * * * *

Note: The italicized portions of the preceding agreement were written by hand on a preprinted form.

Statement

James Creek Marina
___ V Street, S.W.
Washington, DC 20024

2/28/97

PAGE 1

To: John Singleton
13208 Music Mastr Dr.
Silver Spring, MD 20904

HOME: 301/890-0747WORK: 202-878-0899

ACCOUNT # B 58

DATE	INV/CK #	DESCRIPTION	DUE	CHARGES	PAYMENTS	BALANCE
						198.00
7/22/94	M MM9408	PREPAID-MONTH	08/10/94	198.00		181.50
8/11/94		CREDIT MEMO PD9408 APPLIED			16.50	165.00
8/15/95		CREDIT MEMO PD9504 APPLIED			16.50	31.67
8/22/95	TC45-043	PAYMENT ON INVOICE MM9408			133.33	0.00
8/11/96	91	PAYMENT ON INVOICE MM9408			31.67	198.00
8/11/94	M MM9409	PREPAID - MONTH	09/10/94	198.00		181.50
8/11/94		CREDIT MEMO PD9409 APPLIED			16.50	0.00
6/31/96	91	PAYMENT ON INVOICE MM 9409			181.50	198.00
9/19/94	M MM9410	PREPAID - MONTH	10/10/94	198.00		181.50
9/19/94		CREDIT MEMO PD9410 APPLIED			16.50	0.00
6/31/96	91	PAYMENT ON INVOICE MM9410			181.50	198.00
__/24/94	M MM9411	PREPAID - MONTH	11/10/94	198.00		181.50
__/22/94		CREDIT MEMO PD 9411 APPLIED			16.50	

70a

DATE	INV/CK #	DESCRIPTION	DUE	CHARGES	PAYMENTS	BALANCE
						0.00
5/31/96	91	PAYMENT OF INVOICE MM9411			181.50	198.00
1/22/94	M MM9412	PREPAID - MONTH	12/10/94	198.00		181.50
1/22/94		CREDIT MEMO PD9412 APPLIED			16.50	0.00
5/31/96	91	PAYMENT ON INVOICE MM9412			181.50	198.00
2/19/94	M MM9501	MONTHLY SLIP	01/10/95	198.00		181.50
2/19/94		CREDIT MEMO PD9501 APPLIED			16.50	0.00
5/31/96	91	PAYMENT ON INVOICE MM9501			181.50	198.00
1/18/95	M MM9502	MONTHLY SLIP	02/10/95	198.00		181.50
1/18/95		CREDIT MEMO PD9502 APPLIED			16.50	120.67
5/31/96	91	PAYMENT ON INVOICE MM9502			60.83	318.67
2/20/95	M MM9503	MONTHLY SLIP	03/10/95	198.00		516.67
3/15/95	M MM9504	MONTHLY SLIP	04/10/95	198.00		714.67
4/20/95	M MM9505	MONTHLY SLIP	05/10/95	198.00		698.17
4/20/95		CREDIT MEMO PD9505 APPLIED			16.50	

JAMES CREEK
EXHIBIT C

Statement

James Creek Marina
___ V Street, S.W.
Washington, DC 20024

2/28/97

To: John Singleton
13208 Music Mastr Dr.
Silver Spring, MD 20904

HOME: 301/890-0747 WORK: 202-878-0899

ACCOUNT # B 58

DATE	INV/CK #	DESCRIPTION	DUE	CHARGES	PAYMENTS	BALANCE
						896.17
6/24/95	H MM9506	MONTHLY SLIP	06/10/95	198.00		1094.17
6/19/95	M MM9507	MONTHLY SLIP	07/10/95	198.00		1292.17
7/20/95	M MM9508	MONTHLY SLIP	08/10/95	198.00		1275.67
		CREDIT MEMO PD9508 APPLIED			16.50	1473.67
	M MM9509	MONTHLY SLIP	09/10/95	198.00		1457.17
8/18/95		CREDIT MEMO PD9509 APPLIED			16.50	1467.17
9/21/95	M DB 9510	DOCK BOX	10/10/95	10.00		1665.17
9/21/95	M MM9510	MONTHLY SLIP	10/10/95	198.00		1648.67
9/21/95		CREDIT MEMO PD9510 APPLIED			16.50	2458.67
9/30/95	D 459	TRANSIENT	10/10/95	810.00		

DATE	INV/CK #	DESCRIPTION	DUE	CHARGES	PAYMENTS	BALANCE
10/20/95	M DB9511	DOCK BOX	11/10/95	10.00		2468.67
10/20/95	M MM9511	MONTHLY SLIP	11/10/95	198.00		2666.67
10/20/95		CREDIT MEMO PD9511 APPLIED			16.50	2650.17
10/31/95	D 460	TRANSIENT	11/10/95	918.00		3568.17
11/20/95	M DB9512	DOCK BOX	12/10/95	10.00		3578.17
11/20/95	M MM9512	MONTHLY SLIP	12/10/95	198.00		3776.17
11/20/95		CREDIT MEMO PD9512 APPLIED			16.50	3759.67
11/30/95	D 461	TRANSIENT	12/10/95	882.00		4641.67
12/18/95	M DB 9601	DOCK BOX	01/10/96	10.00		4651.67
12/18/95	M MM9601	MONTHLY SLIP	01/10/96	198.00		4849.67
12/18/95		CREDIT MEMO PD9601 APPLIED			16.50	4833.17
12/31/95	D 462	TRANSIENT	01/10/96	918.00		5751.17
1/19/96	M DB 9602	DOCK BOX	02/10/96	10.00		5761.17
1/19/96	M MM9602	MONTHLY SLIP	02/10/96	198.00		5959.17
1/19/96		CREDIT MEMO PD9602 APPLIED			16.50	5942.67
01/31/96	D 463	TRANSIENT	02/10/96	918.00		6860.67
02/19/96	M DB 9603	DOCK BOX	03/10/96	10.00		6870.67

EXHIBIT C
COMPLAINT

Statement

James Creek Marina
___ V Street, S.W.
Washington, DC 20024

2/28/97

PAGE 3

To: John Singleton
13208 Music Mastr Dr.
Silver Spring, MD 20904

HOME: 301/890-0747 WORK: 202-878-0899

74a

ACCOUNT # B 58

DATE	INV/CK #	DESCRIPTION	DUE	CHARGES	PAYMENTS	BALANCE
						7068.67
2/19/96	M MM9603	MONTHLY SLIP	03/10/96	198.00		7052.17
2/19/96		CREDIT MEMO PD 9603 APPLIED			16.50	7898.17
2/29/96	D 464	TRANSIENT	03/10/96	846.00		7908.17
3/25/96	M DB9604	DOCK BOX	04/10/96	10.00		8106.17
_/__/96	M MM9604	MONTHLY SLIP	04/10/96	198.00		8089.67
3/25/96		CREDIT MEMO PD9604 APPLIED			16.50	9007.67
_/31/96	D 465	TRANSIENT	04/10/96	918.00		9017.67
_/23/96	M DB9605	DOCK BOX	05/10/96	10.00		9215.67
_/23/96	M MM9605	MONTHLY SLIP	05/10/96	198.00		9199.17
_/23/96		CREDIT MEMO PD9605 APPLIED			16.50	

DATE	INV/CK #	DESCRIPTION	DUE	CHARGES	PAYMENTS	BALANCE
_/30/96	D 466	TRANSIENT	05/10/96	882.00		10001.17
_/31/96	D 467	TRANSIENT	06/10/96	918.00		10999.17
6/30/96	D 468	TRANSIENT	07/10/96	882.00		11881.17
6/30/96	M DB9606	DOCK BOX	07/10/96	10.00		11891.17
7/30/96	M DB9607	DOCK BOX	08/10/96	10.00		11901.17
7/30/96	D MM9606	MONTHLY SLIP	08/10/96	198.00		12099.17
7/30/96		CREDIT MEMO PD9606 APPLIED			16.50	12082.67
7/30/96	D MM9607	MONTHLY SLIP	08/10/96	198.00		12280.67
7/30/96		CREDIT MEMO PD9607 APPLIED			16.50	12264.17
7/30/96	M NF9607	NSF CHECKS	08/10/96	1000.00		13264.17
7/31/96	D 469	TRANSIENT	08/10/96	918.00		14182.17
8/30/96	M DB9608	DOCK BOX	09/10/96	10.00		14192.17
8/31/96	D 470	TRANSIENT	09/10/96	918.00		15110.17
9/30/96	D 471	TRANSIENT	10/10/96	882.00		15992.17
9/30/96	M DB9609	DOCK BOX	10/10/96	10.00		16002.17
10/31/96	D 472	TRANSIENT	11/10/96	918.00		16920.17
10/31/96	M DB9610	DOCK BOX	11/10/96	10.00		16930.17

EXHIBIT C
COMPLAINT

Statement

James Creek Marina
___ V Street, S.W.
Washington, DC 20024

2/28/97

PAGE 4

To: John Singleton
13208 Music Mastr Dr.
Silver Spring, MD 20904

HOME: 301/890-0747 WORK: 202-878-0899

76a

ACCOUNT # B 58

DATE	INV/CK #	DESCRIPTION	DUE	CHARGES	PAYMENTS	BALANCE
						17128.17
11/21/96	D MM9608	MONTHLY SLIP	12/10/96	198.00		17326.17
11/21/96	D MM9609	MONTHLY SLIP	12/10/96	198.00		17524.17
11/21/96	D MM9610	MONTHLY SLIP	12/10/96	198.00		17722.17
11/21/96	D MM9611	MONTHLY SLIP	12/10/96	198.00		18604.17
__/__/96	D 473	TRANSIENT	12/10/96	882.00		18614.17
__/__/96	M DB9611	D0CK BOX	12/10/96	10.00		19532.17
12/31/96	D 474	TRANSIENT	01/10/97	918.00		19542.17
12/31/96	M DB9612	DOCK BOX	01/10/97	10.00		19740.17
1/16/97	D MM9612	MONTHLY SLIP	02/10/97	198.00		19938.17
1/16/97	D MM9701	MONTHLY SLIP	02/10/97	198.00		

DATE	INV/CK #	DESCRIPTION	DUE	CHARGES	PAYMENTS	BALANCE
						20136.17
1/16/97	M MM9702	MONTHLY SLIP	02/10/97	198.00		21054.17
1/31/97	D 476	TRANSIENT	02/10/97	918.00		21064.17
1/31/97	M DB9701	DOCK BOX	02/10/97	10.00		21245.67
2/28/97	M 458	Promotional Dis	03/10/97	181.50		22055.67
2/28/97	D 475	TRANSIENT	03/10/97	810.00		22065.67
2/28/97	M DB9702	DOCK BOX	03/10/97	10.00		

CURRENT	1-30 DAYS	31-60 DAYS	OVER 60 DAYS	NEW BALANCE
1001.50	1522.00	928.00	18614.17	22065.67

EXHIBIT C
COMPLAINT

VERIFICATION BY DECLARATION
UNDER PENALTY OF PERJURY
PURSUANT TO 28 U.S.C. § 1746

I, DAMIAN BUCKLEY, declare under penalty of perjury as follows:

1. I am over eighteen (18) years of age and have personal knowledge of and am competent to testify to the facts contained in this Declaration.

2. I am the General Manager of James Creek Marina ("James Creek") with responsibilities concerning James Creek's accounting, accounts receivable and slip rental.

3. I am familiar with the books and records of James Creek for the account of John Singleton referred to in the foregoing Verified Complaint.

4. I have read the foregoing verified Complaint and it is true and accurate to the best of my knowledge, information and belief, based on my review of the documents held by James Creek for the loan account of Singleton.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

EXECUTED THIS 26TH DAY OF FEBRUARY, 1997, AT WASHINGTON, D.C.

/s/ Damian Buckley
DAMIAN BUCKLEY
GENERAL MANAGER

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MARINA MANAGEMENT SERVICES, INC.
200 West Palmetto Park Road,
Suite 302
Boca Raton, Florida 33432
As Agent for
MIF REALTY, LP
600 E. Las Colinas Blvd.
Suite 1900
Irving, Texas 75039
(d/b/a)
JAMES CREEK MARINA
200 V Street SW
Washington, D.C. 20024

Plaintiff,

v.

VESSEL MY GIRLS (a.k.a. JENNY LYNN)
Official Number: 659523,
Her Engines, Masts, Anchors, Cables, Chains,
Rigging, Tackle, Apparel, Furniture, and
All The Necessaries Therewith Appertaining

IN REM,

and

JOHN SINGLETON
13208 Music Master Drive
Silver Spring. MD 20904

IN PERSONAM

Defendants

CIVIL ACTION NO: 97-0423-PLF

* * * * * * * * * * * * * * * * * * * *

AMENDED VERIFIED COMPLAINT TO
FORECLOSE MARITIME LIEN FOR NECESSARIES

Marina Management Services, Inc., as agent for MIF Realty, LP, d/b/a James Creek Marina (hereafter "James Creek")[1], Plaintiff, by it undersigned attorneys, sues the Vessel MY GIRL (a.k.a JENNY LYNN), Official Number 659523 (hereafter "MY GIRL"), her engines, masts, anchors, cables, chains, rigging, tackle, apparel, furniture, and all the necessaries therewith appertaining, *in rem*, and John Singleton ("Singleton"), in *personam*, and as grounds for its Verified Complaints states as follows:

JURISDICTION

1. This is a case of admiralty jurisdiction as hereinafter more fully appears and is an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure. This Court has jurisdiction over this action pursuant to 46 U.S.C. §31342, 28 U.S.C. §1331 and 28 U.S.C. §1333.

PARTIES

2. **Plaintiff, Marina Management Services, Inc., as agent for MIF Realty, L.P., d/b/a James Creek Marina is an**

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[1] **James Creek Marina has been owned and operated by various entities and property managers during Defendant Singleton's stay at the marina. Because ownership and management frequently changes, the marina is known by its patrons simply as "James Creek" or "James Creek Marina" and shall be identified as such here. The marina has its own bank account in the name of "James Creek Marina" and all payments made to the marina are made payable to "James Creek Marina" and not to Marina Management, Services, Inc. or any other entity.**

incorporated entity under the laws of Florida and doing business in Washington, D.C., as the operating management company for James Creek Marina. It is authorized to, among other things, collect all past and presents debts owed to James Creek Marina under the marina's past and present License Agreements. Additionally, it is authorized to provide storage, dockage, fuel and other necessaries to vessels kept at James Creek Marina.

3. Defendant, Vessel MY GIRL, Official Number 659523, is a 1983 34 foot Silverton Convertible. According to the records of the United States Coast Guard, at all times pertinent hereto, the Vessel MY GIRL was owned by John Singleton, defendant. *See* U.S. Coast Guard Abstract of Title issued 2/19/97 and attached hereto as ***EXHIBIT A.*** She is presently located at Gangplank Marina, 600 Water Street, SW, Washington, D.C. 20024 and is now within the jurisdiction of this Court.

4. Defendant, John Singleton, is an individual and resident of the state of Maryland.

FACTS

5. **On or about February 3, 1994, April 1, 1994 and May 1, 1994, Singleton executed various License Agreements ("Agreements")** with James Creek, under which James Creek agreed to lease storage/docking space to Singleton for the vessel MY GIRL for the monthly amount $198.00 minus a $16.50 promotional credit. **Copies of the License Agreements** are attached hereto as ***EXHIBIT B***. The term of the Agreements was extended by the parties in writing until June 7, 1996.

6. Singleton failed to make timely payments as required by the Agreements. Specifically, Singleton failed to make

monthly payment in the amount of $181.50 per month from **April 1, 1194** to date, **with the exception on one payment of $800.00 which was made on August 22, 1995, despite due demand.**[2]

7. **Singleton's only payment was for $800.00 and was made on August 22, 1995. A default has, therefore, occurred under the Agreements and continues to occur.**

8. **Pursuant to the terms of paragraph 19 of the Agreements, as a result of Singleton's TOTAL failure to make the required monthly dockage payments of $181.50, for three (3) consecutive years, Singleton is also responsible for paying transient daily fees of $25.50 ($0.75 per foot per day) for each day that he and the Vessel MY GIRLS benefitted by and from the marina's services without paying for them, plus late fees, all costs of collection and attorneys fees.**

9. **At all times pertinent to this Complaint, James Creek provided necessary dockage, fuel, electrical services and other services essential for the well being of the vessel MY GIRL, in full compliance with the Agreements.**

10. **By virtue of paragraph 20 of the Agreements, all unpaid amounts for dockage "and all other unpaid amount dues from Licensee" give James Creek Marina a maritime lien for necessaries as available under "federal law."**

11. By virtue of 46 U.S.C. §31342(a) **and under paragraph 20 of the Agreements** with Singleton, James Creek has a valid maritime line against the Vessel MY GIRL, her

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[2] **Singleton was only entitled to a promotional discount of $16.50 if he prepaid his rental charges. In reality he put his charges on a non-valid MasterCard so he had effectively not prepaid and was technically not eligible for the promotional discount. He was, however, invoiced at the discounted rate and it is on this rate that all fees are based.**

engines, masts, etc., *in rem*, and an *in personam* contractual claim against Singleton for the unpaid costs of the necessary services provided which total **$30,218.61, as of June, 1997**, plus $25.50 per day for each day thereafter, plus fees for electricity and services which continue to be provided to the vessel, plus attorneys fees, court costs and costs of these proceeding including *custodia legis* expenses. (See ***EXHIBIT B*** at ¶ ¶ 14, 16, 19, and 20). An itemized invoice of James Creek Marina is attached hereto and incorporated by reference herein as ***EXHIBIT C***. All amounts prayed for in the Complaint are specifically provided for by the Agreements, including transient rates, costs and attorneys fees, and are deemed part of James Creek's maritime lien against the vessel.

COUNT I
ACTION *IN REM*
AGAINST VESSEL MY GIRL

12. James Creek incorporates herein by reference the allegations contained in paragraphs 1 through **11** of this **Amended** Verified Complaint.

13. By reason of Singleton's failure to pay for the necessary services he contracted for and received from James Creek for the benefit of the Vessel MY GIRL, James Creek is entitled to immediate foreclosure of its maritime lien on the Vessel MY GIRL, Official Number 659523, and recovery of all sum due thereunder.

WHEREFORE, James Creek demands judgment against Singleton and the Vessel MY GIRL, Official Number 659523, as follows:

(A) That process in *rem* and a warrant of arrest be issued in due form of law in accordance with the practice of this Honorable Court in cases of admiralty and maritime jurisdiction against the Vessel MY GIRL, Official Number

659523, her engines, masts, anchors, cables, chains, rigging, tackle, apparel, furniture, and all the necessaries therewith appertaining, with notice to all persons claiming an interest therein to appear in answer to this verified Complaint;

(B) That the maritime lien for necessaries on the Vessel MY GIRL, Official Number 659523 be declared a valid and subsisting maritime lien upon the Vessel MY GIRL, Official Number 659523, her engines, masts, anchors, cables, chains, rigging, tackle, apparel, furniture, and all the necessaries therewith appertaining, prior and superior to the interests, liens, and claims of all persons or corporations whatsoever, except such persons or corporations as may hold preferred maritime liens on the Vessel MY GIRL, Official Number 659523;

(C) That this Honorable Court shall direct the manner in which the actual notice of the commencement of this suit shall be given by James Creek to the Custodian of the Vessel MY GIRL, Official Number 659523;

(D) That the Vessel MY GIRL, Official Number 659523, her engines, mast, anchors, cables, chains, rigging, tackle, apparel, furniture, and all the necessaries therewith appertaining, be condemned and sold by order of this Honorable Court and that James Creek be paid forthwith from the proceeds of such sale any and all amounts required to be paid by Singleton under the Agreements, including, without limitation, **$30,218.61 as of June, 1997**, plus $25.50 per day to the date of sale, **plus costs of electricity**, plus costs of all services continuing to be provided to the vessel, plus custodia legis expenses, attorneys fees and costs of this proceeding;

(E) That judgment be entered in favor of James Creek against Singleton personally for any deficiency owed after the sale of the Vessel MY GIRL, Official Number 659523 and distribution of the proceeds thereof;

(F) That it be decreed that any and all persons or corporations claiming any interest in the Vessel MY GIRL, Official Number 659523 arising prior to the sale are thereafter barred and foreclosed of and from all right, equity of redemption, and claim of, in, or to the Vessel MY GIRL, Official Number 659523 and every part thereof, by reason of any such interest;

(G) That James Creek may have such other and further relief as the justice of its cause may require.

COUNT II
ACTION *IN PERSONAM*

14. James Creek incorporates herein by reference the allegations contained in paragraphs 1 through 13 of this Verified Complaint.

15. By reason of Singleton's ownership of the vessel and his authority to enter in to an Agreements with James Creek for the necessary services provided to the Vessel MY GIRL by James Creek, and the fact that the vessel has received such services pursuant to that Agreements which were necessary to her safekeeping and condition but Singleton bas failed to pay for such services, Singleton is indebted to James Creek in the amount of **$30,218.61, as of June, 1997** plus $25.50 per day to date of sale, plus cost **of electricity and** for services continuing to be provided to the vessel for her safekeeping, condition and welfare, plus *custodia legis* fees, legal fees and costs of this proceeding;

WHEREFORE, James Creek demands judgement against John Singleton in the amount of **$30,218.61, as of June, 1997** plus $25.50 per day to date of sale, **plus all costs for electricity which was provided to the vessel during the term of the Agreements**, plus costs for services continuing to be provided to the vessel for her safekeeping, condition and welfare, plus

custodia legis fees, legal fees and costs of this proceeding, plus such other and further relief as the justice of its cause may require.

/s/ Lisa Petti Ellis
Lisa Petti Ellis, Esq. Federal Bar No.: 08307
Law Office of Lisa Petti Ellis
8370 Court Avenue, Suite 106
Ellicott City, Maryland 21043
(410) 461-8181
Attorney for James Creek, Plaintiff

[Certificate of service omitted in printing]

VERIFICATION BY DECLARATION UNDER PENALTY OF PERJURY
PURSUANT TO 28 U.S.C.§ 1746

I, DAMIAN BUCKLEY, declare under penalty of perjury as follows:

1. I am over eighteen (18) years of age and have personal knowledge of and am competent to testify to the facts contained in this Declaration.

2. I am the General Manager of James Creek Marina ("James Creek") with responsibilities concerning James Creek's Accounting, accounts receivable and slip rental.

3. I am familiar with the books and records of James Creek for the account of John Singleton referred to in the foregoing Verified Complaint.

4. I have read the foregoing Verified Complaint and it is true and accurate to the best of my knowledge, information and belief, based on my review of the documents held by James Creek for the loan account of Singleton.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

EXECUTED THIS 26th DAY OF FEBRUARY, 1997, AT WASHINGTON. D.C.

/s/ Damian Buckley
DAMIAN BUCKLEY
GENERAL MANAGER

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CIVIL ACTION NO: 97-0423

MARINA MANAGEMENT SERVICES., INC
As Agent for MIF REALTY, LP (d/b/a)
JAMES CREEK MARINA
Plaintiff

v.

VESSEL MY GIRLS,
(a.k.a. MY GIRL II and JENNY LYNN) ***IN REM***

Defendant,

and

JOHN SINGLETON, IN PERSONAM
Defendant, Claimant.

JOHN SINGLETON,
Counter-plaintiff

v.

MARINA MANAGEMENT SERVICES., INC
As Agent for MIF REALTY, LP (d/b/a)
JAMES CREEK MARINA
Counter-Defendant

AMENDED ANSWER AND COUNTERCLAIMS

Defendant and claimant JOHN SINGLETON, for himself and for defendant vessel MY GIRLS, by and through his attorneys, Condon & Forsyth, for his Answer to the Amended Verified Complaint herein states:

AS TO JURISDICTION

1. Denies the allegations contained in paragraph 1 of the Amended Verified Complaint, except that the defendant admits that this Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1333.

AS TO THE PARTIES

2. Defendants lack sufficient knowledge and information to admit or deny the allegations contained in paragraph 2 of the Amended Verified Complaint.

3. Denies that defendant Vessel MY GIRLS (the Vessel) was within the jurisdiction of the Court at the time that the Vessel was seized, denies that the defendant MY GIRLS is located at Gangplank Marina, admits the allegations contained in paragraph 3 of the Amended Verified Complaint which describe the Vessel.

4. Admits the allegations contained in paragraph 4 of the Amended Verified Complaint.

AS TO THE FACTS

5. Denies the allegations contained in paragraph 5 of the Amended Verified Complaint.

6. Denies the allegations contained in paragraph 6 of the Amended Verified Complaint.

7. Denies the allegations contained in paragraph 7 of the Amended Verified Complaint.

8. Denies the allegations contained in paragraph 8 of the Amended Verified Complaint.

9. Denies the allegations contained in paragraph 9 of the Amended Verified Complaint.

10. Denies the allegations contained in paragraph 10 of the Amended Verified Complaint.

11. Denies the allegations contained in paragraph 11 of the Amended Verified Complaint.

AS TO COUNT I

12. Answering paragraph 12 of the Amended Verified Complaint, repeats, reiterates and realleges each and every admission, denial or statement contained in paragraphs 1 to 11 of this Answer with the same force and effect as if herein set forth in full.

13. Denies the allegations contained in paragraph 13 of the Amended Verified Complaint.

AS TO COUNT II

14. Answering paragraph 14 of the Amended Verified Complaint, repeats, reiterates and realleges each and every admission, denial or statement contained in paragraphs 1 to 13 of this Answer with the same force and effect as if herein set forth in full.

15. Denies the allegations contained in paragraph 15 of the Amended Verified Complaint.

FIRST AFFIRMATIVE DEFENSE

16. The doctrine of accord and satisfaction bars plaintiff's actions.

SECOND AFFIRMATIVE DEFENSE

17. Plaintiffs claims are barred by the doctrine of waiver.

THIRD AFFIRMATIVE DEFENSE

18. The action should be dismissed for failure to state a claim upon which relief can be granted.

FOURTH AFFIRMATIVE DEFENSE

19. This Court lacks in rem jurisdiction over defendant vessel MY GIRLS.

FIFTH AFFIRMATIVE DEFENSE

20. This action should be dismissed under the doctrine of laches.

SIXTH AFFIRMATIVE DEFENSE

21. Prior to the commencement of this action and on or about August 18, 1995, John Singleton made partial payment on the debt plaintiffs' allege is due and owing. To the extent, defendant has made partial payment, this action is barred.

SEVENTH AFFIRMATIVE DEFENSE

22. In order to induce defendant John Singleton to remove defendant vessel MY GIRL from the marina, plaintiff's agent represented that defendant John Singleton's slip rental contract with the plaintiff would be satisfied if defendant John Singleton removed defendant vessel MY GIRL from the marina.

The statements and representations made by the plaintiff's agent were false and fraudulent and were known to plaintiff to be false and fraudulent when made.

In truth and in fact, plaintiff has demanded payment of monies allegedly owed under the slip rental contract.

Defendant John Singleton believed such representations to be true and was induced thereby to remove his boat and to not make payment under the contract.

EIGHTH AFFIRMATIVE DEFENSE

23. Plaintiff in December 1996, for good and valuable consideration, duly released and discharged defendant John

Singleton from the alleged claim set forth in the Amended Verified Complaint.

NINTH AFFIRMATIVE DEFENSE

24. Prior to instituting this action, plaintiff never included transient (late) fees in its invoices to defendant John Singleton, and has therefore waived this provision of the contract and is estopped from demanding such fees.

TENTH AFFIRMATIVE DEFENSE

25. This action should be dismissed for failure to join an indispensable party.

COUNTERCLAIMS

COUNTERCLAIM NO. 1
PROPERTY DAMAGE

26. Repeats, reiterates and realleges the allegations and statements contained in paragraphs 1-23 of this Amended Answer and Counterclaims as if set out here in full.

27. By order of this Court dated March 5, 1997, plaintiff Marina Management Services, Inc., as the entity claiming to be James Creek Marina, was appointed substitute custodian of defendant's Vessel MY GIRLS. On or about March 5, 1997, the United States Marshall Service delivered the Vessel together with all property on board into the custody of Marina Management Services, Inc. to be kept safely and securely and to be disposed of as ordered by this Court. At the time the Vessel was delivered into the custody of Marina Management Services, Inc, the following items were on board the Vessel and also delivered into the custody of Marina Management Services, Inc.: a hand held VHF radio, a Garmin GPS receiver, a Data Marine depth sounder, two fire extinguishers, a shore power cord, a phone cord and a "Y" adaptor to the power cord.

28. Thereafter on July 10, 1997 the Court ordered the Vessel released to the defendant/ counter-plaintiff Singleton and Singleton demanded the delivery of the Vessel and all property which had been on board at the time the Vessel was delivered into the custody of Marina Management Services, Inc., but because of the substitute custodian's negligence the property was either lost, stolen or damaged. The substitute custodian failed to return to John Singleton the following items: a hand held VHF radio, a Garmin GPS receiver, a Data Marine depth sounder, two fire extinguishers, a shore power cord, a phone cord and a "Y" adaptor to the power cord. The substitute custodian delivered the Vessel to John Singleton in damaged condition in that the propellers, bilge pumps, electrical system and port side railing were damaged.

29. Because defendant\counter-plaintiff's Vessel was in damaged condition, on or about July 10, 1997, Singleton delivered the Vessel and all property aboard and attached to the Vessel including a rubber dingy back into the custody of Marina Management Services, Inc. and Marina Management Services, Inc. accepted custody of the above described property to keep safely and securely and to be redelivered to Singleton upon demand. On or about July 11, 1997, Singleton demanded delivery of the Vessel including the dingy, but because of plaintiff's negligence the dingy was either lost or stolen. The plaintiff failed to redeliver the dingy to Singleton.

COUNTERCLAIM NO. 2
DEFAMATION

30. Repeats, reiterates and realleges the allegations and statements contained in paragraph 1-29 of this Amended Answer and Counterclaims as if set out here in full.

31. Upon information and belief, on or about the period of March 1, 1997 to the present date, plaintiff Marina Management Services Inc. through its agents, negligently and

with malice caused to be published to third parties false statements including the following: that John Singleton stole parking passes from James Creek Marina and sold them to employees of the Coast Guard, that John Singleton had been arrested by the police, that John Singleton stole equipment off of another vessel berthed at James Creek Marina, that John Singleton owed James Creek Marina over $26,000.

32. The publication of these false and defamatory statements were intended to and did expose the defendant\counter-plaintiff John Singleton to scorn, hatred contempt or ridicule and thereby discouraged other marina operators and marine service providers from having a good opinion of, or from associating or dealing with, defendant\counter-plaintiff.

33. As a direct consequence of the publication of these false and defamatory statements, defendant\counter-plaintiff has suffered mental anguish, distress and humiliation, and has been unable to procure marine services or to find a berth for his Vessel in a timely manner.

COUNTERCLAIM NO. 3

INTENTIONAL INTERFERENCE WITH PROSPECTIVE CONTRACTUAL RELATIONS

34. Repeats, reiterates and realleges the allegations and statements contained in paragraph 1-33 of this Amended Answer and Counterclaims as if set out here in full.

35. As a direct consequence of the publication of the false and defamatory statements set forth in paragraph 29 of this Amended Answer and Counterclaims, defendant\counter-plaintiff has incurred great difficulty in securing a rental slip and procuring repairs to his Vessel.

36. Marina Management Services, Inc., by grossly exaggerating and falsely representing the amount claimed due and owing prevented the defendant\counter-plaintiff from obtaining the release and use of his Vessel. Plaintiff's actions directly and proximately caused defendant\counter-plaintiff to be unable to perform three separate contracts with third parties for the use of the Vessel causing defendant\counter-plaintiff to suffer significant damages.

COUNTERCLAIM NO. 4
WRONGFUL SEIZURE

37. Repeats, reiterates and realleges the allegations and statements contained in paragraph 1-36 of this Amended Answer and Counterclaims as if set out here in full.

38. On March 5, 1997 plaintiff Marina Management Services, Inc., in bad faith and with malice caused to be seized the defendant Vessel when the plaintiff was conducting business in the District of Columbia but was not registered to do business in the District of Columbia and therefore lacked the capacity to cause the defendant Vessel to be seized and to file suit in the District of Columbia. Plaintiff brought the herein action in its "trade name" in order to conceal the fact that plaintiff lacked capacity to sue. Plaintiff knowingly misrepresented to the Court the amount of the alleged claim causing the Vessel to be seized and preventing the defendant from obtaining the release of the Vessel in a timely manner.

39. On or about February 1997 defendant attempted to pay to plaintiff $4,000 in payment for the debt plaintiff alleges was due and owing. Plaintiff's agents refused to accept the defendant's payment. On March 5, 1997, plaintiff caused the defendant Vessel to be seized with knowledge that defendant had attempted to pay to the plaintiff most of the amount that plaintiff alleged was due and owing as of February 26, 1997.

40. As a direct and proximate cause of plaintiff's wrongful seizure of the Vessel, defendant\counter-plaintiff suffered mental anguish and humiliation and financial injury as he was unable to perform three time share agreements for the use of the Vessel, and because he was denied access to his business facilities aboard the Vessel, he was unable to procure contracts for his engineering consultant business and he lost clients for his boat cleaning business.

COUNTERCLAIM NO. 5
ABUSE OF PROCESS

41. Repeats, reiterates and realleges the allegations and statements contained in paragraph 1-40 of this Amended Answer and Counterclaims as if set out here in full.

42. On or about February 28, 1997, plaintiff Marina Management Services, Inc. fraudulently altered the records of defendant\counter-plaintiff's account to reflect a sum due and owing of $26,015.67 which plaintiff knew was false and fictitious. Plaintiff commenced an action on March 3, 1997 alleging that defendant\counter-plaintiff John Singleton was indebted to plaintiff in the false and fictitious amount of $26,015.67 and caused Singleton's Vessel to be arrested. Plaintiff fraudulently exaggerated the amount due and owing in order to injure the defendant\counter-plaintiff by preventing the defendant from obtaining the release of the vessel during the pendency of the litigation, to compel Singleton to pay and satisfy the false and fictitious claim made by the plaintiff.

43. Plaintiff through the above described misrepresentations to the Court caused the arrest of defendant's Vessel to be unnecessarily prolonged for the purpose of injuring Singleton.

44. As a result of the unlawful arrest of the Vessel MY GIRLS, the defendant suffered damages in that he was unable

to perform three timesharing contracts for the use of his boat and he lost clients to his boat cleaning business and prospective contracts for his consulting business, and suffered mental anguish and humiliation. In perpetrating the above acts plaintiff acted maliciously and without cause.

PRAYER FOR RELIEF

Wherefore the defendant\counter-plaintiff seeks compensatory and punitive damages in the amount of $200,000 and costs including attorneys' fees.

CONCLUSION

WHEREFORE, defendants MY GIRLS and JOHN SINGLETON demands judgment dismissing the Amended Verified Complaint in its entirety and awarding defendants judgment against Marina Management Services, Inc.

Date: August 11, 1997 Respectfully submitted,

By: /s/ Thomas J. Whalen

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Of Counsel:
David F. Rifkind

AFFIDAVIT OF THOMAS J. WHALEN, ESQ.

I, Thomas J. Whalen, do hereby declare and depose under penalty of perjury the following:

1. I am a partner of Condon & Forsyth and have practiced law in New York and the District of Columbia for thirty years. As the person who took on this case initially, I accept responsibility, personally and professionally, for the manner in which it has been conducted, and wish to address the Court's views on my conduct, the conduct of my colleagues at the firm and how I see our conduct as conforming with the professional standards and obligations as members of the Bar.

2. My firm has litigated for years before the U.S. District Court, representing principally airlines in accidents, regulatory matters, products liability and insurance litigation.

3. We have represented KLM before Judge Sullivan, Korean Air Lines in the KAL007 shootdown before Judge Robinson, AeroMexico before Judge Hogan and Air America before Judge Pratt. We have not handled maritime matters in recent years. Nevertheless, when Mr. Singleton came to my office I was shocked that a marina licensed by the U.S. Government had seized his boat and charged, after the fact, transient fees and other add-ons which seemed to me, then and now, unjust and unfair. So driven by my conception of my duties and obligations as a member of the Bar to take a case such as this when injustice would otherwise result, I agreed to take on the defense of this matter.

4. From the beginning, and as I learned about the penalties involved, I came to the conclusion that Mr. Singleton should pay what he owed (but not what he did not owe) in order to get his boat back and find another marina at which to dock his boat because, rightly or wrongly, the people at James Creek Marina

intensely disliked him and, from what I could ascertain, passed their views on Mr. Singleton on to other marinas.

5. Mr. Singleton agreed that he should pay what he owed.

6. The Court has stressed, correctly, that John Singleton owes fees for dockage. What Mr. Singleton does not owe, however, is transient fees, as the court correctly has ruled. It should also be noted that it was not John Singleton or his counsel who sought sanctions, though counsel seriously considered filing a Rule 11 motion. The Court, on its own, raised the issue of sanctions against the plaintiff. Pursuant to appropriate procedure, we supported the Court's Show Cause Order.

7. From the beginning, and now, I believe the case should be settled on the basis of what Mr. Singleton owes to the appropriate entity entitled to the fees under the contract, no more and no less. If the plaintiff can not establish it is the rightful owner, then I would accept an indemnity in the event another entity comes forward, which I believe is a reasonable request.

8. Looking at the legal issue of entitlement, I personally examined the bankruptcy proceeding to determine the rights of the plaintiff to claim under the contract with John Singleton. The party with whom Mr. Singleton had his contract is Washington D.C. Associates, a party who is not before the Court. We reviewed the documents in the bankruptcy proceeding of Washington D.C. Associates which was provided to us by the National Park Service and conferred with counsel involved in the bankruptcy. Our investigation did not indicate that the plaintiff was ever assigned the rights under the contract with John Singleton to obtain the dockage fees at issue.

9. According to Mr. Singleton's affidavit submitted herewith, on October 19, 1996 plaintiff's collection agent

invoiced defendant for $3,987.17. On or about December 17, 1996, Mr. Singleton went to the Marina to pay the dockage fees. The money was refused. An offer of payment was again made on January 29, 1997, payment again was refused. Further payment offers were made on February 15, and 24, 1997 which were also refused. Instead, suit was brought on both outstanding dockage fees and transient fees.

10. Prior to requesting a bond hearing we attempted to negotiate a settlement of this dispute. However, the parties were unable to agree on the terms of the settlement as plaintiff insisted that John Singleton not return to James Creek Marina ever, and we were unable to establish to our satisfaction which entities held or might hold a claim to the fees which the plaintiff, who lacked capacity to sue, was seeking.

11. Defendant had deposited in our firm's escrow account two checks totalling $10,000. One check was in the amount of $7,000; the other was in the amount of $3,000. At the bond hearing on May 22, 1997 I advised the Court that at least $7,000 was in our firm's escrow account. At the time I had not confirmed that the second check for $3,000 had cleared (which it had in fact), and I could not represent to the Court that the $10,000 was in fact held in the firm's client escrow account.

12. We requested the Court hold a bond hearing after plaintiff's counsel refused to stipulate to a bond which did not include some measure of transient rates. Following the bond hearing and the hearing with the magistrate we presented an offer to settle at $5,500. This settlement offer was on or about May 22, 1997.

13. On the issue of the counterclaim, I am aware of, and follow to the letter and spirit, my ethical obligations to ensure there is a factual and legal basis for any claim based upon the information obtained from my client as well as David Rifkind's observation of the condition of the boat when it was released.

I filed the counterclaim on those points upon which I was satisfied there was a factual basis. Accordingly, I will not withdraw the counterclaims on the basis that they were frivolous and unwarranted. In my judgment they were not. My client is, however, prepared to withdraw the counterclaims as part of an overall settlement to resolve this case in the interest of my client and to end the litigation and the use of the Court's time and resources.

14. We will settle for $7,708.17 which is calculated as follows:

1. The claimed slip fees as calculated by the Court in the amount of $6,728.17 (which includes fees through July 7, 1997). July 7, 1997 Memorandum Opinion and Order, p. 4 n.4.

2. The Court filing fee in the amount of $150. February 12, 1998 Letter from Lisa Ellis, Esq. To Evelyn Sahr, Esq.

3. The actual Marshall's fees in the amount of $390. *Id.*

4. Prejudgment interest at roughly 6% from March 7, 1997, the date the action was filed, in the amount of $440.00 which is plaintiff's claim for relief. *Id.*

My client will ask the Court to release to plaintiffs the cash bond which is deposited with the Court in the amount of $7,535.55 and the balance will be paid immediately. I will also consent to the discharge of the Court's order to show cause for sanctions against Plaintiff.

My client will also require a full release from the plaintiff, a hold harmless clause and an agreement that plaintiff will seek recovery for defendant's lost or damaged property under plaintiff's insurance policy filed in connection with the seizure and will deliver to defendant any proceeds therefrom.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 23rd day of February, 1998.

/s/ Thomas J. Whalen
Thomas J. Whalen

(2)

No. 99-2090

Supreme Court, U.S.
FILED
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CLERK

In The

Supreme Court of the United States

VESSEL MY GIRLS AND JOHN N. SINGLETON,
Petitioner,

v.

MARINA MANAGEMENT SERVICES, INC.,
DBA JAMES CREEK MARINA,
AS AGENT FOR MIF REALTY L.P.,
Respondents.

On Petition for A Writ of Certiorari
To The United States Court of Appeals
For The District of Columbia Circuit

BRIEF OF RESPONDENT IN OPPOSITION

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2699

QUESTIONS PRESENTED

1. Whether the court of appeals erred in affirming the district court's sanctioning of Petitioner by dismissal of counterclaims that the District Court found were "legally deficient" and "designed primarily to harass" and delay resolution of the case?

2. Whether the court of appeals properly remanded the action pursuant to Fed. R. Civ. P. 17(a) for the real party in interest to consent, to ratify or be substituted into the action?

3. Whether the court of appeals properly found that Petitioner was bound by his counsel's representation to the district court?

PARTIES TO THE PROCEEDINGS AND STATEMENT PURSUANT TO RULE 29.6

Respondent MIF Realty L.P. is a Delaware limited partnership whose partnership interests are not publicly traded. The general partner of MIF Realty L.P. is MIF GEN-PAR L.P., a Delaware limited partnership. The limited partner of MIF Realty L.P. is the Federal Deposit and Insurance Corporation, as successor to the Resolution Trust Corporation. Publicly-traded companies which may have an interest in the outcome of this matter by way of direct or indirect interests in MIF GEN-PAR L.P. include General Electric Company and Goldman Sachs, Inc.

Respondent MIF Realty L.P. has moved in the district court to be substituted in this matter for respondent Marina Management Services, Inc., and accordingly requests that this Opposition be accepted as the Respondent's Opposition to the Retention. Should the Court deny the motion for substitution, MIF Realty L.P. requests that the court accept this Opposition as an *amicus curiae* Opposition.

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No. 99-2090

In The

Supreme Court of the United States

VESSEL MY GIRLS AND JOHN N. SINGLETON,
Petitioner,

v.

MARINA MANAGEMENT SERVICES, INC.,
DBA JAMES CREEK MARINA,
AS AGENT FOR MIF REALTY L.P.,
Respondents.

On Petition for A Writ of Certiorari
To The United States Court of Appeals
For The District of Columbia Circuit

BRIEF OF RESPONDENT IN OPPOSITION

Petitioner asks that this Court review the court of appeals decision that the district court properly dismissed his counterclaims pursuant to Rule 11, Fed. R. Civ. P. Respondent respectfully submits that there is no basis for review of the court of appeals' conclusion that the district court did not abuse its discretion when the lengthy record before the district court supported its findings that the counterclaims were "legally deficient" and "designed primarily to harass" in a litigation over a $7,663.21 debt for boat dock fees -- an action that the court characterized in a written order as "breathtak-

ing" in its "lack of civility and *ad hominem* attacks." Further, Petitioner requests that this Court review the court of appeals' determinations that: (i) the action be remanded so that the real party in interest could consent to, ratify, or seek to substitute itself into the action; and (ii) that a statement to the district court by Petitioner's counsel may bind Petitioner. These requests are unwarranted. Initially, Petitioner's request is moot because the real party in interest does not wish to prosecute this action further. Respondent has filed in the district court a motion to substitute itself as plaintiff as the real party in interest, and then dismiss all plaintiff's claims in this action. Substantively, there is no basis for this Court's review because the court of appeals decision to remand for consent, ratification or substitution of the real party in interest is in perfect accord with the governing Federal Rule of Civil Procedure. Further, the law is well-settled that a representation by counsel to a court may bind the client, and thus there is no reason for this Court to review that issue. Accordingly, the Petition should be denied.

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-20a) is reported at 202 F.3d 315. The memorandum decision and orders of the district court (Pet. App. 48a-57a) are unreported.

JURISDICTION

The court of appeals entered its judgment on February 11, 2000, and denied motions for rehearing and rehearing en banc on March 29, 2000. The petition for a writ of certiorari pursuant to 28 U.S.C. § 1254(1) was filed on June 26, 2000.

STATEMENT

1. The James Creek Marina (the "Marina") is located along James Creek in southwestern Washington, D.C. on land owned by the federal government. (Pet. App. 2a). The Marina is operated pursuant to a concession from the United States National Park Service (the "Concession"), which in 1994 was held by Washington D.C. Associates, a limited partnership (the "First Concessioner"). (Pet. App. 6a). Thereafter, the First Concessioner filed a voluntary petition in bankruptcy in the United States Bankruptcy Court for the District of Columbia. *Id.* Respondent MIF Realty L.P. ("MIF"), then the holder of a mortgage on the Marina, subsequently acquired the First Concessioner's rights to operate the Concession. *Id.* Marina Management Services, Inc. ("MMS") manages the Marina as the property manager for MIF. Among the duties conferred upon MMS pursuant to a written agreement between MIF and MMS is the duty to collect unpaid fees owed by licensees of the Marina.

2. From the Spring of 1994 through mid-1997, Petitioner John N. Singleton ("Singleton" or "Petitioner") moored at the Marina his 34-foot recreational vessel My Girls (the "Vessel"). The genesis of this case is Singleton's extended -- and undisputed -- failure to pay monthly mooring and related fees. (Pet. App. 3a, 98a-102a).

3. At the time that Singleton brought the Vessel to the Marina in the spring of 1994, he entered into an agreement governing the mooring use of the Marina (the "Marina License Agreement"). (Pet. App. 2a-3a). The Marina License Agreement required that Singleton pay a monthly fee as a condition of mooring his boat at the Marina. *Id.* The Marina License Agreement also provided that rate could change, without notice, to a much higher "transient" or daily rate if Singleton should default thereunder. *Id.* Although there is some disagreement as to whether the Marina License Agreement was extended formally beyond its initial 12-month term, it is undisputed that Singleton continued to moor the Vessel at the Marina until mid-1997.

4. MMS initiated suit before the district court on March 3, 1997, relying upon the district court's admiralty jurisdiction under 28 U.S.C. § 1333(1) and 46 U.S.C. § 31342 and federal question jurisdiction under 28 U.S.C. § 1331. The initial complaint filed by MMS listed James Creek Marina as plaintiff. The district court subsequently determined that the Marina was not a legal entity entitled to bring suit in its own name and granted MMS leave to amend its complaint to reflect a proper plaintiff. *See James Creek Marina v. Vessel My Girls*, 964 F. Supp. 20, 21 (D.D.C. 1997). (Pet. App. 25a-31a). MMS subsequently filed an amended complaint listing Marina Management Services, Inc. "dba James Creek Marina, as agent for MIF Realty L.P." as plaintiff. (Pet. App. 79a-80a). MMS sought in its complaint to impose a maritime lien upon the Vessel and procure its arrest pursuant to 46 U.S.C. § 31342 and Admiralty Rule E(5)(a), and sought an *in personam* money judgment against Singleton. *Id.* After an initial hearing, the district court ordered the arrest of the Vessel (Pet. App. 23a-24a), and fixed a bond amount so that Singleton could procure its release by posting such amount with the clerk of the court. (Pet. App. 25a-31a). The district

court later reduced the bond amount after ruling that MMS had improperly overstated Singleton's debt by utilizing the higher "transient," or daily, rate, notwithstanding that MMS had invoiced Singleton at the lower monthly rate. (Pet. App. 32a-36a). After the bond amount was lowered, Singleton posted the required amount and obtained the release of the Vessel. (Pet. App. 37a-38a).

5. After MMS had filed its amended complaint, Singleton filed an amended answer in which he asserted counterclaims and sought damages, costs and legal fees. (Pet. App. 88a-97a). Three of Singleton's counterclaims directly related to or arose out of the litigation of this case. In his first counterclaim, Singleton claimed that certain items of personal property were missing from the vessel when it was released to him after he posted bond. (Pet. App. 92a-93a). Singleton's fourth counterclaim asserted a "wrongful seizure" claim arising from (i) MMS's alleged failure to be registered to do business in the District of Columbia at the time of suit, and (ii) MMS's purportedly wrongful refusal to accept $4,000 as full satisfaction to his debt. (Pet. App. 95a-96a). Singleton's fifth counterclaim accused MMS of abusing the judicial process by intentionally overstating the amount due at the time of the arrest of the Vessel. (Pet. App. 96a-97a). Singleton's two remaining counterclaims concerned statements allegedly made by MMS to third parties. Singleton alleged that MMS had falsely stated to third parties that Singleton had engaged in certain criminal activities while present at the Marina, and that he had also failed to pay for the mooring of the Vessel. (Pet. App. 93a-95a). Singleton asserted that these alleged statements gave rise to causes of action against MMS for defamation and interference with prospective contractual relations. *Id.*

6. The district court ordered MMS on July 7, 1997 to provide an explanation for MMS's alleged overstatement of the amount of its claim. Specifically, the district court required MMS's counsel to "show cause in writing under oath . . . as to why sanctions should not be levied against [MMS] and its counsel for having misled the Court." (Pet. App. 36a). After reviewing the responses submitted by both parties, the district court entered an order in February, 1998 reprimanding both counsel for their "breathtaking" "lack of civility and *ad hominem* attacks." (Pet. App. 41a-42a). The February order also noted that Singleton's "counterclaims, which threaten to delay the immediate resolution of a case involving admittedly unpaid boat dock fees, appear to be mostly fraudulent and designed primarily to harass. *See* Rule 11, Fed. R. Civ. P." *Id.* The February order concluded by warning that unless counsel for the parties reached some agreement and withdrew the "offending pleadings," the case would be referred to a special master to investigate and recommend appropriate sanctions, including the referral of counsel to the district court's Grievance Committee. *Id.*

7. No pleadings were withdrawn. In August, 1997, MMS moved for summary judgment on its claims. In January 1999, the district entered judgment against Singleton in the amount of $7,663.21. (Pet. App. 48a-49a). In the same ruling, the district court also sanctioned both parties, explaining that "[b]oth counsel have engaged in name-calling, personal attacks and petty arguments, and have burdened the Court with repetitions of arguments already rejected." (Pet. App. 52a). The district court sanctioned MMS and its counsel by reducing MMS' requested award of attorney fees by approximately $20,000. (Pet. App. 51a-52a). The district court sanctioned Singleton by dismissing his remaining counterclaims. (Pet. App. 52a-53a). The court explained its reasoning as follows:

> Defense counsel has filed counterclaims that appear frivolous and designed primarily to harass and delay a final resolution of this case. For the reasons discussed in its Order of February 9, 1998, these counterclaims will be dismissed. *See* Rule 11(b)(1), Fed. R. Civ. P. . . . . Defendant has announced its consent to dismissal of the fourth of the five counterclaims (for wrongful seizure of the vessel) . . . . The second counterclaim (defamation) and the fifth counterclaim (abuse of process) are deficient because of their integral relationship to the legitimate pursuit by plaintiff of this lawsuit. Finally, when viewed in the context of the petty and niggling conduct of counsel for both parties, all of the counterclaims should be seen as designed primarily to harass. All five counterclaims therefore are properly dismissed under Rule 11 of the Federal Rules of Civil Procedure.

(Pet. App. 52a-53a).

8. The court of appeals reversed the district court's summary judgment decision. (Pet. App. 7a-9a). Pursuant to Fed. R. Civ. P. 17(a), the court of appeals remanded the case to the district court so that MMS could establish consent to or ratification of the commencement of the case by MIF, the apparent real party in interest, or so MIF could be substituted as the plaintiff. *Id.* The court of appeals reversed the sanctions awarded against MMS and its counsel, finding that the record did not establish that the overstatement of MMS' claim had resulted from intentional misrepresentation. (Pet. App. 10a-18a).

9. The court of appeals, however, sustained the dismissal of Singleton's counterclaims. (Pet. App. 18c-20c). Noting that the "central purpose of Rule 11 is to defer baseless filings in district court," the court of appeals, reviewing for abuse of discretion, held that

> The record supports the district court's finding that the counterclaim for abuse of process was legally deficient because of its close connection with a good faith action for recovery of a debt. *See Scott v. District of Columbia*, 101 F.3d 748, 755 (D.C. Cir. 1996); *Croixland Properties Ltd. Partnership v. Corcoran*,174 F.3d 213, 215 (D.C. Cir. 1999). So too, the district court could reasonably conclude that Singleton's defamation claim, which included allegations not necessarily integrally linked to the legitimacy of the debt recovery action, nonetheless was "designed primarily to harass" in view of "the petty . . . conduct of counsel for both parties . . .," as were his counterclaims for property damage and for intentional interference with contractual relations. Marina Management presented multiple affidavits calling into serious doubt Singleton's property damage claim. Without weighing the merits, this peek at the evidence, *cf.*, *e.g.*, *Massachusetts School of Law at Andover, Inc. v. United States*, 118 F.3d 776, 783 (D.C. Cir. 1997); *Air Line Pilots Ass'n, Int'l v. Eastern Air Lines, Inc.*, 869 F.2d 1518, 1521 (D.C. Cir. 1989), confirms that given the contentious history of this unduly prolonged litigation, *see McLaughlin v. Bradlee*, 803 F.2d 11197, 1205-06 (D.C. Cir. 1986), the district

court did not abuse its discretion. (Pet. App. 19a-20a).

REASONS FOR DENYING THE WRIT

1. The court of appeals did not err in affirming the dismissal of Singleton's counterclaims.

The standard of appellate review of a district court's award of sanctions pursuant to Fed. R. Civ. P. 11 is very deferential, and is limited to a determination of whether such sanctions constitute an abuse of discretion. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 405 (1990). Here, the court of appeals found that the district court acted well within its discretion in sanctioning Singleton for asserting improper and frivolous counterclaims. The court of appeals based its decision on its review of the findings made by the district court. (Pet. App. 19a-20a). The decision does not warrant further appellate review by this Court.

Dismissal of a party's claim or counterclaim is an appropriate, albeit a severe, sanction for violations of Rule 11. Fed. R. Civ. P. 11, advisory committee notes (1993) (Supp. 2000) (rule specifically contemplates award of non-monetary sanctions "that may have collateral financial consequences upon a party, such as *dismissal of a claim*, preclusion of a defense, or preparation of amended pleadings.") (emphasis added). Sanctions under Rule 11 involving dismissal of a party's claims are frequently upheld. *See, e.g., Carman v. Treat*, 7 F.3d 1379, 1382 (8th Cir. 1993); *Combs v. Rockwell Int'l Corp.*, 927 F.2d 486, 488-489 (9th Cir. 1991); *Rhineheart v. Stauffer*, 638 F.2d 1169, 1171 (9th Cir. 1979).

Petitioner claims that the district court's findings were wholly inadequate to support the sanction of dismissal. (Pet.

19-28). Petitioner's argument is belied, however, by the record of this case and by the cases upon which Petitioner relies. In its February 9, 1998 order, the district court advised Petitioner that his counterclaims "threaten[ed] to delay the immediate resolution of a case involving admittedly unpaid boat dock fees [and] *appear to be mostly fraudulent and designed primarily to harass*." *See* Rule 11, Fed. R. Civ. P." (Pet. App. 41a-42a) (emphasis added). This statement is tantamount to a finding that the counterclaims had been interposed "for an[] improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation." Fed. R. Civ. P. 11(b)(1). Petitioner took no significant action in response.

Eleven months later, in the context of ruling upon MMS's summary judgment motion, the district court dismissed the counterclaims. (Pet. App. 52a-53a). The district court explained its dismissal sanction by repeating its prior observation that the counterclaims had been interposed for inappropriate purposes -- to delay the collection of an admittedly-owed debt and to harass -- and that such counterclaims appeared frivolous. (Pet. App. 52a-53a). The district court also had substantial evidence with respect to the nature of the claims provided in affidavits filed in various pleadings relating to summary judgment. (Pet. App. 19a-20a). The district court specifically found that two counterclaims were deficient because of "their integral relationship to the legitimate pursuit by plaintiff of this lawsuit" and all counterclaims were "designed primarily to harass" and thereby delay the resolution of a case involving "admittedly unpaid boat dock fees." (Pet. App. 53a). Petitioner's own authority demonstrates that no additional specificity is required. *See Caisse Nationale De Credit Agricole-CNCA v. Valcorp, Inc.*, 28 F.3d 259, 264 (2d Cir. 1994) (district court need only identify "the sanctionable conduct and the authority for the sanctions.")

(quoting *Coltrade International, Inc. v. United States*, 973 F.2d 128, 132 (2d Cir. 1992)).

The district court's sanction of dismissal of the counterclaims is also proper when viewed as an exercise of the court's inherent power to "fashion an appropriate sanction for conduct which abuses the judicial process." *Chambers v. Nasco, Inc.*, 501 U.S. 32, 44 (1991) (awarding $1.1 million in attorney fees for improper conduct). Dismissal is plainly within the scope of the court's inherent powers. *See Roadway Express, Inc. v. Piper*, 447 U.S. 752, 764 (1980) (dismissing plaintiff's lawsuit for abusive conduct).

It is also clear that the district court properly considered less drastic measures before issuing its dismissal order. In the February, 1998 order, the district court explained that the court was considering referring the question of sanctions to a special master for further review and the possible referral to the court's Grievance Committee. *Id.* Petitioner's response to the court's warning was to withdraw one of his five counterclaims, on the theory that the same relief was provided by one of the remaining counterclaims, and to continue to pursue the remaining counterclaims. (Pet. 24). Petitioner also had ample opportunity to be heard as to why his counterclaims might not warrant sanctions. *See Merriman v. Security Inc.*, 100 F.3d 1187, 1192 (5th Cir. 1996) (upholding Rule 11 sanctions where sanctioned attorney failed to request hearing on sanctions during two-year period between granting of sanction, and determination of appropriate award). The court of appeals properly concluded that the district court's sanction was not an abuse of discretion, in light of the record regarding the legal deficiencies and improper purpose of those counterclaims and "the contentious history of this unduly prolonged litigation." (Pet. App. 20a). Accordingly, no further review of this conclusion is necessary.

2. Petitioner's issues with respect to Plaintiff's claims are moot.

The Petition also seeks this Court's review of the court of appeals remand of the case to the district court to permit MMS to establish MIF's consent to or ratification of the commencement of the case, or to substitute MIF as plaintiff, because an agent, rather than real party in interest, might be able to continue the litigation as a result of ratification. The Petition further seeks review of the court of appeals' determination that Petitioner was bound by his counsel's assertion with respect to the length of the contract at issue. Both issues are moot in light of the filing of a motion with the district court which seeks to substitute MIF as the real party in interest with respect to the debt at issue, and then dismiss the allegations against Petitioner. In so doing, MIF is taking the very step which Petitioner would have this Court require by order - *i.e.*, force MIF to become a party, rather than ratify or consent to MMS' action.[1] Finally, by seeking to dismiss the action, the issue regarding a statement by the Petitioner's counsel becomes irrelevant.

"[A] case is moot when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." *County of Los Angeles v. Davis*, 440 U.S. 625, 631 (1969) (quotations omitted). See *also Mills v. Green*, 159 U.S. 651, 654 (1895). The instant case presents a classic "voluntary cessation" situation, in that the real party in interest with respect to the plaintiff's claim, MIF, seeks to be substituted as the plaintiff in respect of such claim and

---

[1] The Petition does not take issue the court of appeals' decision that remand is appropriate to permit substitution of the real party in interest.

dismiss the same, thus eliminating any threat of such claim's revival in the future. *Cf. City of Erie v. Pap's A.M.*, __ U.S. __, 120 S. Ct. 1382, 1390, 146 L. Ed.2d 265, (2000) (mootness lacking because the City of Erie had a continuing interest in determining the constitutionality of its ordinance, and there remained a reasonable possibility of future prosecutions thereunder).

3. The court of appeals did not err in remanding the case to establish MIF's consent or ratification.

Even if the issue of the decision of the court of appeals to remand the case is not moot, the decision is fully consistent with Rule 17(a), Fed. R. Civ. P., and does not conflict with any decision of this Court or any other court of appeals. (Pet. 11-12). Accordingly, no further review is not warranted.

Rule 17 of the Federal Rules of Civil Procedure states, in pertinent part, that "[n]o action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest *until a reasonable time has been allowed after objection for ratification of the commencement of the action by*, or joinder or substitution of, *the real party in interest* . . . ." Fed. R. Civ. P. 17(a) (emphasis added). The court of appeals agreed with Singleton's Rule 17(a) argument that MMS is not the real party in interest with respect to the debt owed by him for mooring and related fees at the Marina. The court of appeals properly remanded the case to permit MMS to establish MIF's consent or ratification, or to substitute MIF as the real party in interest, in accord with Rule 17(a).

Petitioner contends that ratification alone is never appropriate, because it would improperly permit an agent to continue an action in the name of its principal. (Pet. 11-12). However, the cases Petitioner cites on this point do not stand

for the proposition for which they are offered. In *Airlines Reporting Corp. v. S&N Travel, Inc.*, 857 F. Supp. 1043 (E.D.N.Y. 1994), *aff'd*, 58 F.3d 857 (2d Cir. 1995), the Second Circuit reached the exact opposite conclusion: "*ARC is a 'real party in interest' in the sense that this action may properly be maintained in ARC's name*, see Fed. R. Civ. P. 17(a) (defining real parties-in-interest to include those parties with whom or in whose name a contract has been made for the benefit of another) . . ." 58 F.3d at 861, n.4 (emphasis added). The precise issue decided in *Airlines Reporting Corp.* was whether the citizenship of the agent was dispositive for diversity jurisdiction purposes under 28 U.S.C. § 1332(a). *Id.* at 864. Likewise, in *Hanna Mining Co. v. Minnesota Power & Light Co.*, 739 F.2d 1368, 1370 (8th Cir. 1984), the court of appeals *refused* to decide the issue on appeal concerning Rule 17, and instead explicitly limited its ruling to whether federal jurisdiction was barred by the Johnson Act. In *Archie v. Shell Oil Co.*, 110 F. Supp. 542 (D. La. 1953), *aff'd*, 210 F.2d 653 (5th Cir. 1954), the district court dismissed (and the Fifth Circuit affirmed, in a three-sentence opinion) a suit where the plaintiff was found to be a straw party for another person that was manipulating the litigation to further a fraudulent scheme.

None of these cases undermine the decision of the court of appeals in this case, and none of them establish a conflict among the circuits. In fact, at least five circuits have published decisions which permit ratification of the commencement of a case by a non-party who is also the real party in interest. *See, e.g., Prevor-Mayorsohn Caribbean, Inc. v. Puerto Rico Marine Management, Inc.*, 620 F.2d 1, 4 (1st Cir. 1980); *Icon Group, Inc. v. Mahogany Run Dev. Corp.*, 829 F.2d 473, 478 (3d Cir. 1987); *Associated Ins. Mgmt. Corp. v. Arkansas Gen. Agency, Inc.*, 149 F.3d 794 (8th Cir. 1998); *Mutuelles Unies v. Kroll & Linstrom*, 957 F.2d 707, 712 (9th

Cir. 1992); *Integon Life Ins. Corp. v. Browning*, 989 F.2d 1143, 1153-1154 (11th Cir. 1993). No circuit court has adopted a conflicting rule. In remanding the case to permit MMS to establish MIF's ratification or consent, the court of appeals followed the plain language of Rule 17(a) and the interpretations of these other circuits.

The court of appeals' decision is also fully consistent with well-established admiralty principles. As this Court stated in *Houseman v. Cargo of The Schooner North Carolina*, 40 U.S. 40, 49 (1841), "we consider it as well-settled in admiralty proceedings, that the agent of absent owners may libel either in his own name, as agent, or in the name of his principals, as he thinks best." This venerable admiralty doctrine remains the law today. *See Prevor-Mayorsohn Caribbean, supra*, 620 F.2d at 4; *Aunt Jemima Mills Co. v. Lloyd Royal Belge*, 34 F.2d 120, 122 (2d Cir. 1929); *The Nichiyo Maru*, 89 F.2d 539, 543 (4th Cir. 1937); *Marathon Int'l Petroleum Supply Co. v. I.T.I. Shipping, S.A.*, 766 F. Supp. 130, 135 (S.D.N.Y. 1991), *Junior Gallery, Ltd. v. Neptune Orient Line, Ltd.*, 1997 WL 26293, at *4 (S.D.N.Y. 1997); *Kumar Corp. v. Nopal Lines, Ltd.*, 462 So. 2d 1178, 1184 (Fla. Dist. Ct. App 1985). Although neither the district court nor the court of appeals relied upon this rationale, such authority constitutes an independent legal basis upon which the court of appeals might properly remand the case. Accordingly, further review of the court of appeals' decision is not warranted.

4. The court of appeals properly refused to permit Singleton to disavow a representation made to the district court by his counsel.

There is substantial uniformity in the law that ordinarily, a concession or representation of counsel *will* bind a

client, even if the attorney is mistaken. *See, e.g., City of Wichita v. Southwestern Bell Tel. Co.*, 24 F.3d 1282, 1288 (10th Cir. 1994); *Dehsara v. Gustafson*, 1991 U.S. App. LEXIS 10122, 3 (9th Cir. May 8, 1991); *Burgin v. Broglin*, 900 F.2d 990, 998 (7th Cir. 1990); *United States ex rel. Yesudian v. Howard Univ.*, 153 F.3d 731, 748 (D.C. Cir. 1998). In this case, Singleton's counsel advised the district court that the parties had extended the Marina License Agreement in June, 1996. At oral argument before the court of appeals, Singleton's counsel sought to retract his representation, asserting that he had been mistaken. The court of appeals ruled that Singleton was bound by his attorney's concession:

> Singleton's attorney informed this court at oral argument that he was mistaken in representing to the district court that the parties' agreement had been extended in June 1996. His change of position comes too late: having conceded the fact of extension in the district court, he cannot alter the record now.

(Pet. App. 9a). The court of appeals relied in part on *Yesudian*, *supra*, in refusing to permit Singleton's counsel to retract this admission. This decision (which is neither distinguished nor even discussed in the Petition) is in accord with the decisions of other courts of appeals noted above. Therefore, further review of the decision below on this issue is not warranted.

CONCLUSION

For the foregoing reasons, the Petition for a writ of certiorari should be denied.

Respectfully submitted,

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October 2, 2000

Supreme Court, U.S.
FILED
OCT 12 2000
CLERK

(3)

No. 99-2090

IN THE

Supreme Court of the United States

VESSEL MY GIRLS and JOHN N. SINGLETON,

Petitioners,

v.

MARINA MANAGEMENT SERVICES, INC., d/b/a/ JAMES CREEK MARINA as Agent for MIF REALTY, LP,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

REPLY BRIEF OF PETITIONERS

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REPLY BRIEF

Petitioner John N. Singleton (hereinafter "Singleton" or "Petitioner") has been forced to endure nearly four years of litigation brought by Marina Management Services, Inc. (hereinafter "Marina Management"), during which Singleton's boat was arrested and he was required to post a bond and pay Marina Management $7,663.21 for the release of his boat. During this time, Singleton incurred legal costs in defending the claims of Marina Management for backdated transient boat storage fees of $918 a month, which were never charged to Singleton, and for attorneys fees pursuant to two written contracts, which were never in evidence. After all this litigation, it was finally determined that Marina Management had no legal claim and was not the real party in interest.

Now, MIF Realty L.P. (hereinafter "MIF"), the real party in interest, has come forward in this Court for the first time, arguing that the case is moot, because MIF is planning to "substitute" itself for Marina Management and dismiss all of Marina Management's claims against Singleton, thereby ending the litigation.

Allowing MIF to be substituted for Marina Management, in order to extricate itself *and* Marina Management from what Marina Management has done, would be fundamentally unfair and contrary to the Federal Rules of Civil Procedure. Such a maneuver would leave Singleton with a substantial legal bill, uncompensated damages and the loss of $7,663.21. Singleton paid $7,663.21 pursuant to a district court order to a "person" (Marina Management) who had no legal right to seize the boat and no legal right to the $7,663.21 because it was not the real party in interest.

Under MIF's plan, Singleton would be without a remedy because the sanctions against Marina Management, imposed by the district court, were set aside by the court of appeals and the district court dismissed Singleton's counterclaims as frivolous under Rule 11. This latter Rule 11 holding was affirmed by the court of appeals under an abuse of discretion standard.

This case is not about a man and his boat and a claim by a marina for boat storage fees. This case is about due process to be effectuated by a proper application of the Federal Rules of Civil Procedure, specifically Rules 11, 17 and 25. Rule 17 does not permit MIF to do what it proposes. There is no basis in this Court or in the district court for MIF to be substituted as a party respondent or party plaintiff.[1]

RULE 17

The 1996 Amendments to Rule 17 were not intended to, and do not, make any substantive changes in the application of the Federal Rules governing joinder or substitution. All the 1996 Amendments did, as the Advisory Committee's Notes show, is to protect a real party in interest from the expiration of the statute of limitations, codifying the rulings in *Levinson v. Deupree*, 345 U.S. 648 (1953), and *Link Aviation, Inc. v. Downs*, 325 F. 2d 613 (D.C. Cir. 1963). *Levinson* allowed "substitution" and *Link Aviation* allowed "joinder." Now, as before, only a person with a substantive claim may prosecute the claim. Depending upon the circumstances, a real party in interest can enter the case either by filing a new action (which will not be time-barred) or, if permitted by Rules 19 or 20, by

---

[1] Marina Management has not opposed Singleton's petition. However, the opposition of MIF and its counsel, as amicus, would ensure that the important issues in this case are well-briefed and explored. MIF is not a party and has no legal standing to file an opposition under the rules of the Court.

"joinder" or, if permitted by Rule 25, by "substitution." That is all Rule 17 says. Rule 25 still governs substitution. It does not allow MIF to be "substituted," inasmuch as there was no death of a party, incompetency of a party or change of public office holder. Fed. R. Civ. P. 25. Furthermore, substitution, because of a transfer of interest, is simply inapplicable. Marina Management has no interest to transfer to MIF.

Although MIF may commence a new action, it apparently does not wish to do so.

Subject to the reimposition of sanctions against Marina Management, which were erroneously set aside by the court of appeals, and subject to additional sanctions, which may be imposed by the district court for Marina Management's conduct, and subject to Singleton's counterclaims (which Singleton requests the Court to allow), Marina Management's complaint must be dismissed because it is not the real party in interest.[2]

Singleton never argued that MIF should be substituted. Singleton argued only that MIF is the party which has the legal claim to be prosecuted and is the proper party plaintiff to prosecute a claim for boat storage fees, not Marina Management.

Contrary to Federal Rule 17, the court of appeals held that Marina Management, despite the fact it was merely an agent and not the real party in interest, could continue with the action

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[2] MIF mistakenly invoked the venerable admiralty doctrine that a cargo owner's agent may libel in his own name, as agent, or on behalf of the distant cargo owner. *Houseman v. Cargo of The Schooner North Carolina*, 40 U.S. (15 Pet.) 40 (1841). This doctrine has been applied only to cargo owners' agents. It has never been applied to a marina, port owner, concessionaire or their agents for the collection of fees for marina services. It is inapplicable to the present case.

if the real party in interest, MIF, consented to or authorized the action. This decision is in conflict with the decisions of the other circuits which hold that an action must be brought by the real party in interest.

MIF's argument that the case is moot has no basis in law. MIF's mangled reading of the Rule 17(a) Amendments, along with the confused application of the Amendments by U.S. courts of appeals in the cases cited by both Singleton and MIF, strongly indicate that the courts and practitioners require the Court's guidance on the proper construction of Rule 17(a) and, in particular, the 1996 Amendments to the Rule, which have never been addressed by the Court.

RULE 11

Petitioner Singleton does not dispute that dismissals of claims have been upheld under Rule 11 in the face of recalcitrant conduct by a party or his attorney. This is not the issue for which Singleton seeks review. The issue of this petition concerns the review standard to be applied when a district court dismisses a party's claims under Rule 11 as frivolous and designed to harass, depriving a person of his day in court. The proper test, as repeatedly stated by the Court and the Second Circuit, is that, upon review, it must be patently clear that a claim has absolutely no chance of success and is not well-grounded in law and fact. *See Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *Sussman v. Bank of Israel*, 56 F.3d 450, 457 (2d Cir.), *cert. denied sub nom. Bank of Israel v. Lewin*, 516 U.S. 916 (1995). This was not the standard of review applied by the court of appeals in this case.

MIF, in its Brief in Opposition, implies that the district court found that Singleton's counterclaims were "legally deficient." While MIF may be trying to characterize the district court's finding of "frivolousness," as "legally deficient," the

district court at no time examined Singleton's counterclaims or made findings setting forth why any of the counterclaims were "legally deficient," "frivolous" or "fraudulent."[3]

The court below misapplied the abuse of discretion standard set forth by the Court in *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384 (1990), to a dismissal of an action under Rule 11. Dismissal of a party's claim was not the issue in *Cooter & Gell*. In *Cooter & Gell*, the Court established a deferential standard of review of Rule 11 sanctions with respect to conduct of counsel and parties, such as the sanctions imposed in this case on Marina Management by the district court. However, the court below ignored the deferential standard which was applicable to Marina Management's conduct while, at the same time, erroneously embraced a deferential standard to uphold dismissal of Singleton's claims under Rule 11.

The decisions of the court below are contrary to decisions of the Court and the Second Circuit. On their face, the counterclaims of Singleton are arguably valid in law and fact and should not have been dismissed under Rule 11 and the dismissal should not have been upheld by the court of appeals under an abuse of discretion standard of review.

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[3] MIF has misquoted, in a prejudicial way, the district court's finding. MIF states: "The February order also noted that Singleton's counterclaims, which threaten to delay the immediate resolution of a case involving admittedly unpaid boat dock fees, appear to be mostly *fraudulent* and designed primarily to harass." MIF's Brief in Opposition, p. 6, 10 The district court actually held: "[D]efendants' counterclaims, which threaten to delay the immediate resolution of a case involving admittedly unpaid boat dock fees, appear to be mostly *frivolous* and designed primarily to harass." (Pet. App. 42a).

FINDING OF FACTS BY THE COURT OF APPEALS

In the litigation, Singleton's counsel charged that Marina Management submitted to the district court a false statement of account detailing fees that were owed, which in fact were never charged to Singleton. On the basis of that false statement, the district court had ordered Singleton's boat arrested with the result that a general bond was set in an amount Singleton could not afford. The district court later sanctioned Marina Management for misleading the court. In fact, at no time in the case did Marina Management submit any evidence (except a verified complaint) that there were written contracts covering the periods for which Marina Management was claiming transient fees of $918.00 per month. The only contract Singleton signed, which was in evidence, expired by its terms on March 31, 1995. That contract was with Washington D.C. Associates which went bankrupt. Thereafter, MIF acquired the concession rights to the marina, effective September 1996. (*See* Pet. 6a). There was no evidence in the record that a written contract providing for transient fees and attorneys' fees existed between Singleton and Washington D.C. Associates beyond March 1995.

The existence of such an executory contract with Washington D.C. Associates, which could be assumed by MIF Realty in the bankruptcy proceeding of Washington D.C. Associates, was crucial to *any* legal claim to pre-October 1996 fees. Without such an executory contract, MIF would be entitled to fees, on a *quantum meriut* basis, of $190 a month only from October 1996 to March 1997.

Needing such a contract, Marina Management apparently, by photocopy techniques, created a 1996 contract allegedly "signed" by Singleton which was actually reproduced from the 1994 contract Singleton did sign. The signature is exactly the same on both documents because it is the same. (*See* Rep.

App. 1a.) This altered contract was never submitted as evidence by Marina Management.

In the present case, the court of appeals, without any evidence, found that Singleton executed the 1996 contract. The court of appeals also found that the district court was misled by the colloquy of counsel, something the district court never said or held. This was a "finding" contrary to the evidence in the case contained in the verified complaint of Marina Management. Fact finding, based upon colloquy of counsel, or for any other reason, is outside the role of the court of appeals as a court of review. While the 1996 "contract" was only recently disclosed by Marina Management and was not before the court of appeals, it is illustrative of the reasons why factual issues should be decided by trial courts, upon evidence.

CONCLUSION

This case involves important questions of law regarding the standard of review of the Rule 11 sanction of dismissal, the power of the court of appeals to make findings of fact and, finally, the proper application of Rule 17(a), particularly in respect to the 1996 Amendments to Rule 17(a), which have never been addressed by the Court.

For the reasons set forth herein and in the petition itself, petitioner urges that its petition for a writ of certiorari be granted. Petitioner also urges that the Court grant MIF's motion to appear as *amicus*.

Respectfully submitted,

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REFERENCE: Document Examination - United States District Court for the District of Columbia: Marina Management Services, Inc. et al

v. Vessels my Girls (a.k.a. Jenny Lynn) Official Number 659523.
Her Engines, Masts, Anchors, Cables, Chains, Rigging, Tackle, Apparel, Furniture and All The Necessities Therewith Appertaining

IN REM, And John Singleton, IN PERONSONAM, Defendants

DATE: July 10, 2000

Dear Mr. Whalen:

I have considered the following documents produced by the Defendant Vessels My Girls, et al and John Singleton. They are identified by number, and will be described more fully below: (S)C Contract 1994, (Q)C Contract 1996-A, and (Q)C Contract 1996-B.

To more accurately depict these documents, they are referenced in the report with (S) for all identified standards and (Q) for all identified questioned documents. Additionally, the letter "C" shows that the document is a photocopy as opposed to an original.

At your request, the following documents have been examined and a written report is submitted.

EXHIBITS -- QUESTIONED

(Q)C Contract 1996-A
At the top of the page is typed PLEASE PRINT, AND COMPLETE ALL INFORMATION." The line below is typed "DATE SLIP NEEDED," next to which is written "6/1/96." At the bottom of the page, above "APPLICANT'S SIGNATURE," is the signature "John Singleton."

Below the signature "John Singleton" and above the typed words "ACCEPTED BY" is a printed name "S.M. WILTAMUTH." Across from that name is the printed word "DOCKMASTER," under which is the typed word "TITLE.

Across from the signature are numbers "40 x 5.50 = $220 x 11^{mth} = $2420.^{00}$ — 12 = $201.6. Below are two handwritten dates "6/7/96," with one directly above the other. Below that date are typed lines indicating spaces for numbers, under which is the typed word "DATE."

(Q)C Contract 1996-B
At the top of the page are typed the date "06/05/2000," the time "05:28," a phone number "4104618182," a name "LISA P. ELLIS," and the page "PAGE 02." Written in hand in the upper right-hand corner are the numbers "40190." Below the abovementioned names, dates and number is the heading "APPLICATION FOR LICENSE & INFORMATION SHEET

PLEASE PRINT, AND COMPLETE ALL INFORMATION." From there, all written, printed and typed information is the same as on (Q)C Contract 1996-A.

EXHIBITS -- STANDARDS

(S)C CONTRACT 1994

At the top of the page is the heading "JAMES CREEK MARINA APPLICATION FOR LICENSE & INFORMATION SHEET PLEASE PRINT, AND COMPLETE ALL INFORMATION." The line below is typed "DATE SLIP NEEDED," next to which is typed "March 1, 1994." At the bottom of the page, above "APPLICANT'S SIGNATURE," is the signature "John Singleton." Just below the signature is a label "JAMES CREEK EXHIBIT B."

To the far right are two handwritten dates in typed spaces for that purpose. The dates are "2/3/94" and "3/4/94." Underneath each one is the typed word "DATE."

QUESTION

Are (Q)C Contract 1996-A and (Q)C Contract 1996-B photocopies of (S)C Contract 1994, which was altered to reflect specific changes, such as the change in date?

BASES AND REASONS FOR THE OPINION

In support of my opinion, I have considered the documents supplied by the Defendant, as referenced on Page 1 of this report. Bases and reasons for the opinion are included but not limited to the following categories, nor are they listed in any given specific order.

1. **Pictorial Appearance**
   There is a consistent similarity in the pictorial appearance when comparing the identified standard and the identified documents in question.

2. **Typewritten Client Information**
   The typewritten information, such as the client's name, address, and other vital information is similar in both the standard and the documents in question.

3. **Placement of Typed Letters Relative to the Lines**
   The unique placement of the typed letters relative to the lines is similar in both the standard and the documents in question.

4. **Misspelled Words and Abbreviated Names**
   Misspelled words, such as "Wasington,' as opposed to "Washington," and "Convertibie," instead of "Convertible," as well as the name "Industrial Bank of Wash" are identical both on the identified standard and the documents in question.

5. **Outdated Length of Time**
   The length of time at a given location is incorrect on either the known standard, which pertains to 1994, or on documents in question, which pertains to the year 1996. In two categories, "5 yrs." is a given length of time for two categories in both 1994 and 1996.

6. **Outdated Insurance Expiration**
   The insurance expiration date, which is "6-23-94" on the known standard, dated "1994," also is "6-23-94" on the documents in question, dated "1996."

7. **Handwritten Dates and Numbers**
   The second handwritten date "6/7/96," which is above the typed word "DATE" in the lower right-hand corner of the

documents in question, reveal markings that appear to have been written underneath.

8. **Applicant's Signature**
The handwritten signature appears to be almost the same on both the known standard and the documents in question. It is virtually impossible for a person to duplicate precisely his or her signature. However, this examiner respectfully requests the right to examine the original signatures for the known standard and the document(s) in question, in order to make a definitive opinion.

9. **Other Cursive and Printed Signatures**
Beneath that signature on the known standard (S) C Contract 1994, and to the left of the label, is an indistinguishable signature above the words "ACCEPTED BY." Across the page is handwritten the word "Manager" preceded by another that cannot be easily read. They are written above the typed word "TITLE."

Known cursive and printed signatures for "S.M. Wiltamuth" are requested for a comparative examination to the printed signature "S.M. Wiltamuth" on the document in question.

OPINION

Based upon the documents submitted for examination, and with the understanding that the original documents are not accessible at this time, it is my qualified opinion that the standard, referenced as (S) C Contract 1994, may have been photocopied and altered to reflect the changes evident in the documents in question, referenced as (Q) C Contract 1996-A and (Q) C Contract 1996-B. However, until the original evidence becomes available for comparative examination, my opinion cannot be conclusive.

This examiner respectfully requests the right to examine the original known standard and the original document(s) in question, including the original signatures for both the known standard and questioned documents. When such original documents become available for examination, this report will be modified, if necessary, regarding the opinions and information as stated herein.

_____

Julie C. Edison, Examiner of Questioned Documents
July 10, 2000

Attachments: Copies, Photocopies of Identified Standard and Questioned Documents

BEST AVAILABLE COPY

AMES CREEK MARINA
APPLICATION FOR LICENSE
& INFORMATION SHEET
PLEASE PRINT. AND COMPLETE ALL INFORMATION.

DATE SLIP NEEDED: March '. '994

PRESENTLY BERTHED AT: _____

OWNER
NAME: John A. Singleton
ADDRESS: 13208 Music Master Dr.
CITY: Silver Spring STATE: MD ZIP: 20904
HOME PHONE: (301) 890-0747
WORK PHONE: (202) 898-0899
SOCIAL SECURITY #: 386-62-9170
LENGTH OF RESIDENCE: 5 yr
OWN ___ LEASE ___ OTHER _____

CO-OWNER
NAME: _____
ADDRESS: _____
CITY: _____ STATE: ___ ZIP: ___
HOME PHONE: ( ) -
WORK PHONE: ( ) -
SOCIAL SECURITY: # _____
LENGTH OF RESIDENCE _____
OWN ___ LEASE ___ OTHER _____

BANK NAME: Industrial Bank of Wash
BANK NAME: _____
CHECKING ACCT NO: 524085
SAVINGS ACCT NO: _____

EMPLOYER OR BUSINESS: Aerotech Corp.
ADDRESS: 1221 11 St. Washington D.C. 20001
LENGTH EMPLOYED: 5yr.
POSITION HELD: President
1ST CAR LIC.# _____ STATE: MD
MAKE & MODEL: 91 Grand Cherokee
2ND CAR LIC.# _____ STATE: ___
MAKE & MODEL: _____
EMERGENCY PHONE NUMBER & NAME: (313) 871-1760 Ruth Singleton
OTHERS ALLOWED ABOARD: _____

BOAT INFORMATION

BOAT NAME: _____ YEAR MADE: 93 MAKE & MODEL: Silverton Convertible
TYPE (POWER.SAIL.HOUSEBOAT) Power TYPES OF FUEL USED: Gas
LENGTH OVERALL (INC. BOWSPRIT. SWIM PLATFORM. ETC.): 34 BEAM: 12 6 DRAFT: 3 1
HEIGHT. _____ HULL COLOR: White TOPSIDES COLOR: White
TYPE OF CONSTRUCTION (WOOD. FIBERGLASS. STEEL. ETC.): Fiberglass
REGISTRATION OR DOCUMENTATION NO.: 659523 STATE: DC
HULL & LIABILITY INSURANCE CARRIER(S): _____
POLICY NUMBER(S): 777081
EXPIRATION DATE(S): 6-23-1994

FILED
MAR 03 1994

For the purpose of obtaining storage space for the boat described above and other [illegible] applicants. I submit the above information and I hereby authorize the Marina to verify any information concerning the statements contained herein. I understand that the Marina reserves the right to retain this information together with this application in their files whether or not this application is accepted. I hereby certify that the above statements are correct. The Marina requests that this information be kept current. In the event of changes to the above information, please notify the Marina Offices. Copies of the current vessel registration and declarations pages of the insurance policies currently in effect are required to be kept at the Marina Office for so long as the Vessel is in the Marina.

(S) C Contract 1994

[redacted]

APPLICANTS SIGNATURE [redacted] TITLE

2/7/94
DATE

ACCEPTED BY

3/4/94
DATE

JAMES CREEK
EXHIBIT B

A-7

SLIP NEEDED: 6/1/96

PRESENTLY BERTHED AT:

OWNER
NAME: John A. Singleton
ADDRESS: 12208 Music Master Dr.
CITY: Silver Spring STATE: MD ZIP: 20904
HOME PHONE#: 301 . 890-0747
WORK PHONE#: 202 . 898-0899
SOCIAL SECURITY #: 186-62-2170
LENGTH OF RESIDENCE: 5 yrs
OWN__ LEASE__ OTHER:

CO-OWNER
NAME:
ADDRESS:
CITY: STATE: ZIP:
HOME PHONE: ( )
WORK PHONE: ( )
SOCIAL SECURITY #:
LENGTH OF RESIDENCE:
OWN__ LEASE__ OTHER:

BANK NAME: Commercial Bank of Wash
BANK NAME:
CHECKING ACCT NO: 524085
SAVINGS ACCT NO:

EMPLOYER OR BUSINESS: American Corp.
ADDRESS: 1221 11 St. Washington D.C. 20001
LENGTH EMPLOYED: 5yr. POSITION HELD: President
STATE: D MAKE & MODEL Grand Cherokee
CAR LIC.#
STATE: MAKE & MODEL
D CAR LIC.#
EMERGENCY PHONE NUMBER & NAME: 301 . 871-1760 Ruth Singleton
THERS ALLOWED ABOARD:

BOAT INFORMATION

BOAT NAME: YEAR MADE: 93 MAKE & MODEL Silverton Convertible
TYPE (POWER SAIL HOUSEBOAT: Power TYPES OF FUEL USED: Gas
LENGTH OVERALL (INC. BOWSPRIT. SWIM PLATFORM. ETC.): 34 BEAM: 12 6 DRAFT: 3 1
HEIGHT: HULL COLOR: White TOPSIDES COLOR: White
TYPE OF CONSTRUCTION (WOOD. FIBERGLASS. STEEL. ETC.): Fiberglass
REGISTRATION OR DOCUMENTATION NO.: 659523 STATE: DC
HULL & LIABILITY INSURANCE CARRIER(S):
POLICY NUMBER(S): 777081
EXPIRATION DATE(S): 6-23-1994

For the purpose of obtaining storage space for the boat described above and other privileges available for tenants, I submit the above information. I hereby authorize the Marina to verify any information concerning the statements herein and to retain this information together with this application in their files whether or not this application is accepted. I hereby certify that the above statements are correct. The Marina requests that this information be kept current. In the event of changes to the above information, please notify the Marina Office. Copies of the current vessel registration and documentations pages of the insurance policies currently in effect are required to be kept at the Marina Office for so long as the Vessel is in the Marina.

40 x 5.50 = $220 x 11 mth = $2420. 10% = 242. = $2662.

6/7/96
DATE

APPLICANT'S SIGNATURE

DOCKMASTER
TITLE

6/7/96
DATE

ACCEPTED BY

(Q) C Contract 1996-A

A-8

BEST AVAILABLE COPY

APPLICATION FOR LICE[illegible]
& INFORMATION SHEE[illegible]

PLEASE PRINT. AND COMPLETE ALL INFORMATION.

DATE SLIP NEEDED: 6/1/96

PRESENTLY BERTHED AT: 3

OWNER

NAME: John A. Singleton

ADDRESS: 13208 Music Master Dr.

CITY: Silver Spring STATE: MD ZIP: 20904

HOME PHONE: (301) 890-0747

WORK PHONE: (202) 898-0899

SOCIAL SECURITY #: 386-62-9170

LENGTH OF RESIDENCE: 5 yr

OWN ___ LEASE ___ OTHER ___

CO-OWNER

NAME: ___

ADDRESS: ___

CITY: ___ STATE: ___ ZIP: ___

HOME PHONE: ( )

WORK PHONE: ( )

SOCIAL SECURITY #: ___

LENGTH OF RESIDENCE ___

OWN ___ LEASE ___ OTHER ___

BANK NAME: Industrial Bank of Wash CHECKING ACCT NO: 524085

BANK NAME: ___ SAVINGS ACCT NO: ___

EMPLOYER OR BUSINESS: Aerotecn Corp.

ADDRESS: 1221 11 St. Washington D.C. 20001

LENGTH EMPLOYED: 5yr. POSITION HELD: President

1ST CAR LIC.#: ___ STATE: MD MAKE & MODEL: Grand Cherokee

2ND CAR LIC.#: ___ STATE: ___ MAKE & MODEL: ___

EMERGENCY PHONE NUMBER & NAME: (313) 871-1760 Ruth Singleton

OTHERS ALLOWED ABOARD: ___

BOAT INFORMATION

BOAT NAME: ___ YEAR MADE: 93 MAKE & MODEL: Silverton Convertible

TYPE (POWER SAIL HOUSEBOAT) Power TYPES OF FUEL USED: Gas

LENGTH OVERALL (INC. BOWSPRIT, SWIM PLATFORM, ETC.): 34 BEAM: 12 6 DRAFT: 3 1

HEIGHT: ___ HULL COLOR: White TOPSIDES COLOR: White

TYPE OF CONSTRUCTION (WOOD, FIBERGLAS[illegible] STEEL, ETC.): Fiberglass

REGISTRATION OR DOCUMENTATION NO.: 659523 STATE: DC

HULL & LIABILITY INSURANCE CARRIER(S): ___

POLICY NUMBER(S): 777081

EXPIRATION DATE(S): 6-23-1994

For the purpose of obtaining storage space for the boat described above and other privileges available for tenants, I submit the above information and I hereby authorize the Marina to verify any information concerning the statements herein and to retain this information together with this application in their files whether or not this application is accepted. I hereby certify that the above statements are correct.

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Copies of the current vessel registration and documentation papers of the insurance policies currently in effect are required to be kept on the Marina Office for so long as the Vessel is in the Marina.

40 ft 5.50 = $220 x 11 mos = $2420. ÷ 12 = $201.

4/7/96

APPLICANT'S SIGNATURE — DATE

ACCEPTED BY — TITLE — DATE

A-9